

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

~~~~~

XEROX STATE &  
LOCAL SOLUTIONS, INC.,

Plaintiff,

vs. Case No. 1:15CV1707

CITY OF CLEVELAND, OHIO,

Defendant.

~~~~~

Deposition of
LARRY JONES, II
PAGE 9 WAS DEEMED CONFIDENTIAL
April 21, 2016

9:30 a.m.

Taken at:

Baker Hostetler LLP
127 Public Square, Suite 2000
Cleveland, Ohio

Christine M. Emery, Notary Public

1 APPEARANCES:

2 On behalf of the Plaintiff:

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12 On behalf of the Defendant:

13 City of Cleveland Department of
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22

~ ~ ~ ~ ~

23 ALSO PRESENT:

24 Wes Wadle (telephonically)
25

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* Exhibit 2 marked in a previous deposition

1 LARRY JONES, II, of lawful age, called
2 for examination, as provided by the Federal
3 Rules of Civil Procedure, being by me first
4 duly sworn, as hereinafter certified, deposed
5 and said as follows:

6 EXAMINATION OF LARRY JONES, II

7 BY MR. BRENNAN:

8 Q. Good morning.

9 A. Good morning.

10 Q. My name is Terry Brennan and I,
11 along with Sam Camardo, represent Xerox in the
12 current lawsuit filed by Xerox against the City
13 of Cleveland relating to a traffic camera
14 program.

15 You're aware today that you are
16 here to have your deposition taken?

17 A. Yes.

18 Q. And you have given deposition
19 testimony before?

20 A. Yes.

21 Q. On how many occasions?

22 A. This is the second of this week, so
23 I think four overall.

24 Q. Four related to traffic cameras?

25 A. No. Four including this one, yes,

1 all related to trafficking cameras.

2 Q. Okay. And I'm just going to run
3 through some of the rules of a deposition, even
4 though you had one yesterday and you have had
5 several others, just to make sure we are on the
6 same page.

7 As you are probably aware, I am
8 going to be asking you a series of questions.
9 If at any point in time you don't understand
10 one of my questions and you want a
11 clarification, will you please let me know?

12 A. Yes.

13 Q. I'm going to assume that if you
14 answer a question, you understood the question,
15 and you are prepared to give an answer on that
16 topic, so again, clarify anything that is
17 unclear, let me know if you are unable to
18 answer a question. Okay?

19 A. Okay.

20 Q. The stenographer is here. She is
21 going to be taking down questions and answers.
22 Nods of the head, shrugs of the shoulders,
23 don't get recorded on the transcript, even
24 though we might be able to see it here
25 visually, so please responds orally. Okay?

1 A. Yes.

2 Q. There may be times where I may ask
3 a long question, so I would encourage you to
4 just pause before you give an answer, make sure
5 I've concluded my question before you give an
6 answer, and I will try not to interrupt you.
7 Although, I apologize in advance if I do while
8 are you giving an answer, because I want you to
9 give full and complete answers. Okay?

10 A. Okay.

11 Q. This is not a marathon, it's not an
12 endurance contest, I don't expect this is going
13 to take much time today. But if at any point
14 in time you want to take a break, just let us
15 know, we are happy to take a break. Okay?

16 A. Okay.

17 Q. The one caveat to that is, if there
18 is a question pending, I'm going to need you to
19 respond to the question before we go ahead and
20 take a break. Okay?

21 A. Okay.

22 Q. Okay. And, again, please state
23 your name and spell your last name for the
24 record.

25 A. Larry Jones, II. J-O-N-E-S.

1 Q. And, sir, where do you reside?
2 THE FOLLOWING, PAGE 9, WAS DEEMED CONFIDENTIAL
3 AND FOR ATTORNEYS' EYES ONLY

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1 A. I reside at [REDACTED] [REDACTED] [REDACTED] [REDACTED],
2 Cleveland, Ohio.

3 MR. BRENNAN: And we will designate
4 that confidential for purposes of the
5 transcript.

6 MR. NATHANSON: Thank you.
7 END OF CONFIDENTIAL PORTION OF TRANSCRIPT

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1 Q. You are currently employed?

2 A. Currently employed by the City of
3 Cleveland.

4 Q. And in what capacity?

5 A. I'm the project manager for the
6 department of public safety.

7 Q. And what are your duties or
8 responsibilities as the project manager?

9 A. I oversee all technology,
10 implementations for the division of police, a
11 little bit with fire, EMS, so anything related
12 to IT with public safety, I'm involved with.

13 Q. How long have you had that title?

14 A. I've had that title since July of
15 2010.

16 Q. Prior to that, were you employed?

17 A. Yes.

18 Q. And where were you employed prior
19 to that?

20 A. Prior to that I was employed by the
21 Cuyahoga County Justice Services.

22 Q. And what was your title with
23 Cuyahoga County?

24 A. I was a program officer.

25 Q. For how long did you hold that

1 position?

2 A. Program officer for four years,
3 seven months at the county.

4 Q. And what's the highest level of
5 education you have achieved?

6 A. Master's of business
7 administration.

8 Q. You have achieved that from
9 Cleveland State?

10 A. That is correct.

11 Q. Sir, you are aware today that
12 you're testifying in two capacities, one, as
13 what's called a fact witness, where you are
14 just testifying as to facts or information
15 within your personal realm of understanding.
16 The second is what is called a 30(b)(6) witness
17 which, in lay terms means, you are charged with
18 having the knowledge and the responsibility of
19 the City of Cleveland and the information
20 readily available to the City of Cleveland on
21 certain topics. Do you understand that?

22 A. Yes.

23 Q. And we are going to bifurcate the
24 deposition today. The first half of the
25 deposition I'm going to be asking questions in

1 your capacity as a 30(b)(6) witness, we will
2 then conclude that portion of the deposition
3 and I will ask you fact questions. Is that
4 understood?

5 A. Yes.

6 Q. I'm going to show you the notice of
7 deposition, just so we have an understanding of
8 what topics you're the City of Cleveland's
9 designated witness for. And it's previously
10 been marked as an exhibit. But showing you,
11 just for purposes of this deposition, what's
12 previously been marked as Exhibit 2.

13 - - - - -
14 (Thereupon, Plaintiff's Exhibit 2,
15 Notice of Deposition, was previously
16 marked for purposes of
17 identification.)

18 - - - - -

19 Q. Do you have that in front of you,
20 sir?

21 A. I do have Exhibit 2 in front of me.

22 Q. Okay. And is this a document that
23 you've seen before?

24 A. Yes, I have seen this document
25 before.

1 Q. Okay. If you turn to the page
2 numbered two, which has a heading, a third of
3 the of the way down, called matters for
4 examination?

5 A. Yes. I'm on page two.

6 Q. And is it accurate that you are the
7 designated witness for the City of Cleveland on
8 topic one, which is the parties' negotiation of
9 the agreement and its amendment?

10 A. That is correct.

11 Q. Okay. The same would be true for
12 topic four? And take a minute and go ahead and
13 read it.

14 A. That is correct.

15 Q. Is the same true for topic six?

16 A. That is correct.

17 Q. And just to fill in the record,
18 topic two, it speaks for itself, but it deals
19 with the City's purpose for starting and
20 continuing the traffic camera program? I'm
21 sorry, topic four deals with Xerox's
22 performance as the City's vendor?

23 A. Topic four is correct, yes.

24 Q. Okay. Topic six deals with the
25 City's performance under the agreement?

1 A. That is correct.

2 Q. Okay. Are you the City's
3 designated witness for topic seven?

4 A. Yes, I am.

5 Q. Which includes the City's decision
6 to turn off the traffic cameras?

7 A. That is correct.

8 Q. And you are the City's witness for
9 topic eight, the City's decision to stop paying
10 Xerox's monthly fee under the agreement?

11 A. I can comment on topic eight, but
12 I'm not the -- that's a decision that goes
13 above, I would say, my position. So I have
14 dealings with topic eight, but I'm not the
15 final decision maker on topic eight.

16 Q. And we will delve into that a
17 little bit more during the course of this
18 morning, but fair to say the ultimate decision
19 maker for topic eight was the law department?

20 A. That is correct.

21 Q. And we will get to how that was
22 reached. But from a non-law department
23 perspective, you are the person who can most
24 directly speak to that topic on behalf of the
25 City of Cleveland?

1 A. Correct.

2 Q. You are the City's witness for
3 topic 13?

4 A. Again, yes, I can speak to topic
5 13.

6 Q. Okay. Again, I take it from your
7 hesitation that decision was ultimately made by
8 the law department?

9 A. Yes. Yes. So it's -- internally
10 we would have discussions, but ultimately we
11 would present everything to the law department
12 and look for guidance from the law department
13 on those type of matters.

14 Q. Again, we will talk about this in
15 more detail, but did the law department make
16 the decision to not pay Xerox or did the law
17 department make the recommendation and,
18 ultimately, you or someone else within the
19 City, not wearing the hat of the law
20 department --

21 MR. NATHANSON: Objection --

22 Q. -- made the actual decision?

23 MR. NATHANSON: -- as to what the
24 law department told him.

25 Q. I'm asking, who made the decision

1 to not pay Xerox and to discontinue the
2 program? Was there a recommendation by the law
3 department or a decision by the law department?

4 A. Again, those conversations happened
5 with the law department so, essentially, it
6 would be myself, the safety director, finance
7 and the law department in the room, presenting
8 our facts and then the law department reviews
9 everything we give them and then makes a
10 recommendation to us on what action we should
11 take.

12 Q. Okay. And who made the actual
13 decision to not pay Xerox and continue the
14 traffic program?

15 A. Based off that I would say,
16 again --

17 MR. NATHANSON: Object to the form
18 of the question, since the discussions between
19 safety and law or finance and law or whatever
20 respective department would be privileged, but
21 -- you can't talk about those specific
22 statements made. Whether there was a
23 recommendation or a mandate --

24 Q. The question was, who made the
25 decision to stop paying Xerox and discontinue

1 the traffic program?

2 A. Ultimately we take direction from
3 the law department.

4 Q. Okay. Who is we?

5 A. The City as a whole. As I
6 mentioned before, a meeting with the finance
7 director, safety director and law, law is going
8 to make the final recommendation of our course
9 of action.

10 Q. And who makes the final decision,
11 as far as the course of action?

12 A. We are not going to go against what
13 the law department says to us. So if the law
14 recommends a certain action, that's what's in
15 the best interest of the City.

16 Q. Okay. I want the record to be
17 clear. The law department made the decision or
18 the law department made a recommendation or the
19 folks within the City, not within the law
20 department, made the decision?

21 A. The law department makes a
22 recommendation and then we act on that
23 recommendation.

24 Q. If I had to stand in front of a
25 jury and ask you, who made the decision to stop

1 paying Xerox, who made that decision?

2 A. Right now that's something I don't
3 know. Again, I sit in a room, lay out all the
4 facts, there's discussions above my level that
5 happen and then, ultimately, a decision comes
6 down.

7 That's something I wasn't
8 privileged to. I don't recall somebody saying
9 on a certain day or time, this is the decision,
10 we're not paying Xerox. I don't recall that
11 discussion myself.

12 Q. You don't know who made the
13 decision?

14 A. That is correct.

15 Q. All right. Did the mayor make the
16 decision to stop paying Xerox?

17 A. I just responded, I don't know who
18 made that ultimate decision.

19 Q. Okay. So you were part of
20 decisions, the decision was made, but you can't
21 identify a person responsible for making the
22 decision?

23 A. Yes. So there's cabinet meetings
24 that happen, there's other meetings that happen
25 that I'm not invited to. So I lay out the

1 facts of meetings I am invited to of, this is
2 where we are at, and then those discussions
3 happen above, essentially, my pay grade.

4 Q. How did you find out that the
5 decision was made to not pay Xerox?

6 A. Essentially, Xerox kept submitting
7 invoices to us. And until we resolved the
8 legislation, the amendment that was passed,
9 nothing was going to be paid until then.

10 Q. Okay. Who told you that?

11 A. Yes, I received a recommendation
12 saying, we're not paying anything to Xerox
13 until legislation and everything is figured
14 out. So that's directly coming from law,
15 coming from the finance director, coming from
16 the safety director, that hold on until
17 everything -- until this is resolved.

18 Q. Each one of those folks told you
19 that, hold off on paying invoices until this is
20 resolved?

21 A. At the last meeting I had that I
22 was invited to, I was told to collect all
23 invoices and hold onto them until this is
24 resolved.

25 Q. Okay. Who said that?

1 A. Again, that was the same meeting
2 with the law, safety director, finance
3 director.

4 Q. Okay. And just to fill in the
5 blanks here, you are giving me titles, but what
6 are the names of that folks who were involved
7 in that meeting?

8 A. At the time we had two
9 representatives from finance representing
10 Director Dumas, Natasha Brandt, I believe was
11 one of the individuals. Safety Director
12 McGrath was there. And, also, Rick Horvath,
13 from the law department was there. And, I
14 believe, representatives from Clerk of Courts
15 were there also, Maria Vargas.

16 Q. Anyone else that you can think of?

17 A. I believe Monica, I can't recall
18 her last name, but she is in internal audit, I
19 believe also.

20 Q. Within the City of Cleveland?

21 A. Within the City of Cleveland.

22 Q. When did that meeting take place?

23 A. Approximately -- probably sometime
24 between November and December.

25 Q. Of what?

1 A. After the passage of the amendment.

2 Q. Sometime in November, December
3 of --

4 A. Of 2014, yes. I don't have that
5 exact date.

6 Q. You can't pin it down within days
7 or weeks of the November 4th ballot initiative
8 being passed?

9 A. No. Again, I would have to try to
10 look back at my calendar.

11 Q. Okay. But it is fair to say,
12 again, if we are standing in front of a jury
13 trying this case, you can't say I made the
14 decision to turn off the traffic camera or I
15 made the decision to stop paying Xerox, someone
16 else made that decision?

17 A. That is correct.

18 Q. Do you know why that decision was
19 made?

20 A. Part of the ballot amendment that
21 was passed it prohibited photo enforcement
22 cameras being operated without the police
23 officer being there at the camera. And,
24 consequently, once a violation occurred, not
25 only did a police officer have to track that

1 violator down, they had to give them a ticket.
2 So at that present time, there was no way, via
3 the photo enforcement system to print ticket
4 right at that camera location.

5 So if a violation occurred at 71st
6 and Chester, there was no physical way for the
7 system to print out a ticket for that officer
8 to physically give to the motor vehicle.

9 So at that time we could not
10 operate the program.

11 Q. Did the ballot initiative prohibit
12 the City of Cleveland from paying Xerox any
13 monies?

14 A. Based off of the fixed fee for
15 operating the camera program, the cameras were
16 not operating at that time.

17 Q. That's not my question.

18 Did the ballot initiative direct
19 the City of Cleveland to not pay Xerox money?

20 A. No.

21 Q. That was a decision made by the
22 City of Cleveland, not the members of the
23 public who voted in favor of the ballot
24 initiative; correct?

25 A. In --

1 MR. NATHANSON: If you know.

2 A. Again, with speaking to paying
3 Xerox, it was a fixed fee contract, the cameras
4 were not operating, so, therefore, there was no
5 payment.

6 Q. Okay. But the ballot initiative
7 doesn't have language that says, you, the City
8 of Cleveland, are hereby prohibited from paying
9 Xerox any money; correct?

10 A. That is correct.

11 Q. So the decision to not pay Xerox
12 wasn't made because of ballot initiative, it
13 was made based on the City of Cleveland's
14 reasoning; correct?

15 A. Correct.

16 Q. Okay. The purpose, and I've talked
17 a little bit about the traffic camera program,
18 but you're aware that there is a particular
19 contract that's in dispute, as part of the
20 litigation. There was a contract and then
21 there was an amendment to the contract, are you
22 aware of that?

23 A. That is correct.

24 Q. Okay. And the contract, which has
25 previously been marked, and I'm happy to show

1 it to you, it's Plaintiff Exhibit 1.

2 - - - - -

3 (Thereupon, Plaintiff's Exhibit 1,
4 License and Service Agreement, was
5 previously marked for purposes of
6 identification.)

7 - - - - -

8 Q. The contract was effective June
9 1st, 2013. And if you need to take a look to
10 refresh your recollection, if you turn to page
11 three, the agreement in the first line says,
12 it's made and entered into as of June 1, 2013?

13 A. That is correct.

14 Q. Okay. And if you see here,
15 attached to it is an amendment to the
16 agreement?

17 A. (Pause.)

18 Q. And, I'm sorry, probably the
19 easiest thing to do is, if you look at the
20 label on the top of the page, it's 32 of 37.

21 A. Okay. Yes.

22 Q. Okay. The amendment was effective
23 July 15, 2013?

24 A. That is correct.

25 Q. Okay. So for purposes of the

1 record, as I'm describing the contract and the
2 amendment, these are the documents I'm
3 referring to. Is that your understanding as
4 well?

5 A. That is my understanding.

6 Q. The purpose of this contract was to
7 promote public safety; correct?

8 A. That is correct.

9 Q. Okay. The purpose was not to
10 generate revenue; correct?

11 A. That is correct.

12 Q. And before this contract was
13 entered into, the City of Cleveland and Xerox
14 had a previous ongoing relationship for traffic
15 cameras that dealt with both speeding as well
16 as red light violations; correct?

17 A. That is correct.

18 Q. That program as it existed before
19 this contract was also designed to promote
20 public safety; correct?

21 A. Correct.

22 Q. And fair to say the City of
23 Cleveland viewed that program prior to entering
24 into the contract as being effective in
25 promoting that purpose. In other words, the

1 traffic camera program successfully enhanced
2 public safety within the City of Cleveland?

3 A. That is correct.

4 Q. And the reason why the City of
5 Cleveland entered into this contract was to
6 continue that goal, to continue to promote and
7 enhance public safety in the City of Cleveland?

8 A. That is correct.

9 Q. And, in fact, during the course of
10 the contract, it also succeeded in that goal?
11 In other words, the traffic camera program
12 enhanced public safety in the City of
13 Cleveland?

14 A. That is correct.

15 Q. And there was, though, a secondary
16 benefit to the City of Cleveland, which was
17 that it did, in fact, generate revenue;
18 correct?

19 A. Yes, that was the output of the
20 contract.

21 Q. Okay. Again, wasn't the goal of
22 the contract?

23 A. Correct, that wasn't the goal of
24 the contract.

25 Q. It was, for lack of a better

1 phrase, it was icing on the cake?

2 A. Yeah. It is what it is, yes.

3 Q. In other words, the City of
4 Cleveland would have been satisfied with the
5 contract if, as the contract contemplated, it
6 was net neutral, in other words, the City
7 didn't make a dollar?

8 A. That is correct.

9 Q. Okay. But the City was fortunate
10 enough to make more than a dollar. In fact,
11 are you aware that the City of Cleveland made
12 millions of dollars off of this contract?

13 A. Yes.

14 Q. And implementing the traffic camera
15 program, as part of the goal to not generate
16 revenue, to just promote safety and save lives,
17 that was one of the goals; right?

18 A. Yes, that was one of the goals.

19 Q. Okay. And in doing that, the City
20 of Cleveland would sometimes deploy cameras in
21 areas where a particular camera might not
22 generate a lot of revenue, but it was viewed by
23 the City of Cleveland that, this was the
24 location where we want to have a camera to
25 promote safety; correct?

1 A. That is correct.

2 Q. Okay. Can you think of particular
3 locations where that would particularly be true
4 where, if you just looked at an individual
5 traffic camera location, it wasn't a big money
6 maker, but we really need to have a camera
7 there?

8 A. Yes, we had East 159th and Lake
9 Shore, there was a senior high rise building
10 across the street from a Dave's Supermarket,
11 and the council member was very adamant to
12 having a camera there to slow down traffic and
13 folks running red lights in that area. And it
14 was quite effective in slowing traffic down
15 there.

16 And, as you mentioned, it was a
17 camera that if you were just looking at a pure
18 numbers perspective, it didn't generate a lot
19 of violations, but its impact served what it
20 needed to do.

21 Q. The traffic camera program did save
22 lives?

23 A. There has been national studies
24 that says that, so we concurred with that same
25 rhetoric that we've actually put forth to City

1 Council on numerous times about the program.

2 Q. Okay. So the City's actual
3 experience comported with national studies. In
4 other words, the traffic camera program was
5 effective, it saved lives and reduced
6 accidents?

7 A. That is correct.

8 Q. Before the City entered into this
9 contract, did you speak with members of City
10 Council about whether or not the City should
11 continue the traffic camera program?

12 A. Yes.

13 Q. And with whom did you speak?

14 A. We have two committees that a
15 contract has to go through or request
16 proposals.

17 Q. Okay.

18 A. Which is the safety committee and
19 then the finance committee.

20 Q. And who was on the safety committee
21 at the time, at the beginning of and going into
22 the middle of 2013?

23 A. At the time, to the best of my
24 recollection, would be Council Member Mike
25 Polensek.

1 Q. Uh-huh.

2 A. Dona Brady. Kevin Conwell. Matt
3 Zone. I believe Zack Reed. And probably TJ
4 Dow.

5 Q. Was there one person in charge of
6 chairing that committee?

7 A. At that time I believe Kevin
8 Conwell was the chair of the safety committee.

9 Q. And, I'm sorry, what was the full
10 name of the other committee?

11 A. The finance committee.

12 Q. Okay. And who was on the finance
13 committee?

14 A. That one's a bit tougher to recall.
15 I can tell you at the time, I believe, Council
16 Member Sweeney was the chair of that committee.
17 And that committee would have had close to
18 probably 12 members of council on it. That's a
19 pretty big committee.

20 Q. And do you know, were any of the
21 members of the safety committee also members of
22 the finance committee?

23 A. Most likely a couple of them. So
24 most likely Kevin Conwell, Matt Zone, I believe
25 Terrell Pruitt would have been on finance at

1 the time.

2 Q. Is it fair to say that the decision
3 to go forward with the contract was ultimately
4 driven by the safety committee rather than the
5 finance committee?

6 A. Correct. The safety committee
7 approves something, generally -- generally
8 speaking, finance will support what safety
9 recommends.

10 Q. And did you regularly participate
11 in safety committee meetings? Again, the time
12 period being the first half of 2013?

13 A. Yes, I did.

14 Q. How regularly did the committee
15 meet?

16 A. The committee, I believe, meets on
17 the second and fourth Wednesday of each month,
18 except for during the summer recess period.

19 Q. When is the summer recess period?

20 A. Typically June through August.
21 They typically may meet -- have one committee
22 of -- the whole meeting once a month.

23 Q. And did you actually have a
24 position on the committee or you were sort of
25 reporting to the committee?

1 A. Essentially, subject matter expert
2 for public safety when presenting different
3 projects. So this project, I would have been
4 the subject matter expert to present the
5 proposal to council.

6 Q. You took the lead from the public
7 safety perspective to report and make
8 recommendations for the safety committee about
9 whether or not to go forward with the contract?

10 A. Yes, the director would make his
11 opening remarks and then any questions or any
12 other presentations I would handle.

13 Q. And who was the director at the
14 time?

15 A. At the time Marty Flask was the
16 director.

17 Q. And you reported to him at that
18 point in time?

19 A. That is correct.

20 Q. There came a point in time where
21 that changed; correct?

22 A. Yes.

23 Q. And when did that change?

24 A. February of 2014, I believe,
25 Michael McGrath was named safety director.

1 Q. To whom do you report today?

2 A. I report to Chief Information
3 Officer Donald Phillips. Still report to
4 Michael McGrath.

5 Q. Do you consider one of the two of
6 those to be, kind of, your boss or they both
7 kind of are?

8 A. Anything safety related is
9 definitely Director McGrath. And anything IT,
10 IT overall for the City is under Chief
11 Phillips, so I guess it's kind of a dual split.

12 Q. Okay. Does anyone currently report
13 to you?

14 A. No, not at this time.

15 Q. Back in 2013, did anyone report to
16 you?

17 A. No.

18 Q. And during how many of the safety
19 committee meetings was the subject of the
20 traffic camera program discussed? Again
21 limiting it to 2013.

22 A. 2013, it may have -- to the best of
23 my recollection, it may have just been meetings
24 around the request for proposal process. And
25 then the subsequent awarding -- recommending

1 the contract be awarded to Xerox. So there may
2 have been, I'll say, maybe, four meetings at
3 most.

4 Q. Are notes typically kept at these
5 meetings?

6 A. City records, if the legislation --
7 if legislation is passed there will be a record
8 of -- a record -- a City record. However, you
9 can go to a meeting and the committee might
10 decide to table the legislation until the next
11 time they meet.

12 So if any council members have
13 questions about a legislation or they don't
14 feel their answers were thoroughly -- their
15 questions were thoroughly answered, they can
16 always hold legislation, table it until the
17 next meeting.

18 Q. But, in other words, having been
19 involved in a number of committees and
20 organizations, it wasn't the practice that on
21 month two someone presents notes of the
22 meetings of month one and they'd be reviewed
23 and approved?

24 A. No, that was not the practice.

25 Q. And I take it it was your

1 recommendation, in 2013, to continue the
2 program?

3 A. We actually put together a request
4 for proposal committee. So that included
5 members from our traffic unit, myself, the
6 Clerk of Courts, who all reviewed all
7 proposals. So as a group we made that
8 recommendation based on the evaluation of
9 criteria of the different camera proposals that
10 came into us.

11 Q. Okay.

12 A. So it wasn't just my
13 recommendation.

14 Q. Sure.

15 But did you concur in that
16 recommendation? In other words, the
17 recommendation to continue to move forward with
18 the traffic camera program, whether it was
19 going to be with Xerox or another supplier?

20 A. Correct.

21 Q. Okay. And, again, you made that
22 recommendation for public safety reasons?

23 A. Correct.

24 Q. Okay. Fair to say that the City of
25 Cleveland public safety budget at that time was

1 roughly half a billion dollars?

2 A. To the best of my recollection, I
3 believe the City budget is half a billion and
4 public safety is probably about 3 -- about 360
5 million of that.

6 Q. Okay. In terms of City of
7 Cleveland's budgeting, the amount of money that
8 the City of Cleveland would pay Xerox is
9 relatively minimal considering the size of that
10 budget; correct?

11 A. Correct.

12 Q. Were -- before the contract was
13 entered into, were you aware of any council
14 members who were against continuing the traffic
15 camera program?

16 A. Yes, I was.

17 Q. And who were those council members?

18 A. Certain council members, such as
19 Councilman Zack Reed, did not want cameras in
20 his ward. He didn't believe that the program
21 was effective. He felt that the program
22 targeted City -- residents of the City of
23 Cleveland unfairly. So he was one of the
24 council members that were against it.

25 Q. Who else do you recall being

1 against it?

2 A. I know Councilman Pruitt did not
3 want any cameras in his ward also. Councilman
4 Brady, Dona Brady did not want cameras in her
5 ward also.

6 Q. And when you refer to Brady and
7 Pruitt, were they against the program as a
8 whole or just happy to have the program, just
9 don't want the folks in my ward to be subject
10 to it?

11 A. I believe they were neutral when it
12 came down to being for or against it. It was
13 more so, I don't want cameras in my ward and
14 I'm not supporting it. If it passes, it
15 passes, so.

16 Q. And did you explain to Councilman
17 Reed that his conclusion was inaccurate? In
18 other words, citations were largely issued to
19 suburbanites, outer lying communities, rather
20 than residents of the City of Cleveland?

21 A. We made several arguments to
22 Councilman Reed to that effect. However,
23 council members believe what they are going to
24 believe, so.

25 Q. Okay. Understood.

1 A. Yeah.

2 Q. But the empirical data you had
3 supported that? In other words, that it wasn't
4 disproportionally affecting folks in the City
5 to the contrary, more citations were issued to
6 folks who lived in neighboring communities?

7 A. Right. We had the facts, the
8 numbers, of how many times we have been in
9 their ward, the ticket breakdown. So we had
10 all of that quantitative information to give to
11 them.

12 Q. And, again, it supported what I
13 suggested, which is, residents outside of the
14 City of Cleveland were being ticketed more than
15 residents of the City of Cleveland; correct?

16 A. Yes, that's what the data showed.

17 Q. Notwithstanding that, council
18 members are ultimately responsible to the folks
19 in their ward. And if the folks in their ward
20 don't like getting a ticket, they are going to
21 listen to that; right?

22 A. That is correct.

23 Q. Okay. Fair to say, if the City
24 wanted -- if the goal of the program was to
25 generate revenue, the City could have done

1 other things to generate more revenue? In
2 other words, for example increasing the amount
3 of the fine; correct?

4 A. That is correct.

5 Q. The City could have entered into a
6 contract with Xerox or someone else where the
7 City would get paid a percentage of the tickets
8 issued; correct?

9 A. That is correct.

10 Q. Those, among potential other
11 measures, could have been implemented if the
12 goal, again, was not safety, but to promote
13 revenue; correct?

14 A. Correct.

15 Q. But, ultimately, the City of
16 Cleveland decided this is a safety measure and,
17 you know, we are not going to try to get the
18 biggest, you know, dollar amount, in terms of
19 revenue, we want to do the right thing to help
20 promote safety in the City of Cleveland?

21 A. That is correct.

22 Q. Did the City do financial analyses
23 before entering into the contract? In other
24 words, try to determine how much money the City
25 might make by entering into the contract?

1 A. No. What we looked at, as you had
2 just laid out, as part of the request for
3 proposal, we had all vendors who submitted
4 provide basically the different -- not the
5 funding option, but the different price
6 proposal options. So whether it was a fixed
7 fee price or a percentage of the ticket. Just
8 so, financially, we could take a look at the
9 different options. And in the end we went with
10 the fixed fee prices for the reasons you laid
11 out about the public safety driven program.

12 Q. And City of Cleveland, prior to the
13 contract, had been satisfied with the services
14 Xerox had performed, I take it?

15 A. That's correct.

16 Q. And the City of Cleveland was very
17 satisfied with the services Xerox did perform
18 under the contract?

19 A. That is correct.

20 Q. If you would please identify what
21 it is that Xerox did under the contract in your
22 own terms? In other words, did they supply
23 cameras? Did they refurbish cameras? If you
24 could just detail for us everything the City
25 understands that Xerox did under the contract?

1 A. To the best of my understanding,
2 Xerox was responsible for the deployment of the
3 portable camera units. They were responsible
4 for the fixed cameras, whether those are red
5 light, the red light speed on green cameras,
6 the fixed speed cameras. They were also
7 responsible for doing the first blind review.

8 So, essentially, if a violation
9 occurs, they do a review of that violation,
10 determine, yes, this is a good violation. They
11 gather the BMV/DMV information.

12 It's also sent to the division of
13 police, who make that ultimate decision. Once
14 they say, yes, this is a violation, it goes
15 back to Xerox. Xerox is then responsible for
16 mailing out the first notice. If that notice
17 doesn't -- if no payment is received, they mail
18 out the second notice.

19 Q. They being Xerox?

20 A. Yes, they being Xerox.

21 Q. Did Xerox refurbish cameras?

22 A. As part of an amendment that's not
23 listed here from a previous contract, they
24 refurbished six cameras, six of the single
25 green/red light cameras and six of the mobile

1 vehicle cameras.

2 Q. Okay. Did Xerox install new
3 cameras as part of the contract?

4 A. As part of our fee requirement, we
5 mandated that all equipment be brand new.

6 Q. You're aware that going ahead and
7 implementing the contract, Xerox had
8 substantial upfront costs that Xerox
9 anticipated would be covered during the life of
10 the contract?

11 A. I believe that's correct.

12 Q. So, in other words, Xerox has big
13 upfront cost, the contract goes to full terms,
14 Xerox recovers those and hopefully makes a
15 profit; right?

16 A. Yes.

17 Q. And if the contract doesn't go to
18 term Xerox loses money?

19 A. That's a risk with any business
20 dealings.

21 Q. Okay. But that was your
22 understanding? In other words, Xerox paid a
23 lot of money up front, it's not as though Xerox
24 has fixed costs over the life of the program,
25 they have large costs up front that they hope

1 to recover during the life of the contract?

2 A. Correct.

3 Q. And, in fact, that's why there was
4 a termination provision in the contract so if
5 contract terminated early, Xerox could recover
6 those costs?

7 A. Correct.

8 Q. The termination provision within
9 the contract -- and feel free to take a look.
10 The termination provision is only the City of
11 Cleveland's right, the City of Cleveland could
12 have terminated the contract early, Xerox
13 couldn't; correct?

14 A. That is correct.

15 Q. That provision was included within
16 the contract to benefit the City of Cleveland
17 as well as Xerox? In other words, if the City
18 of Cleveland wanted to get out early, they
19 could get out early, but if the City of
20 Cleveland wanted to get out early, Xerox would
21 get paid its upfront costs?

22 A. Yes, that was correct.

23 Q. Okay. You're aware that there is a
24 force majeure provision in the contract?

25 A. Correct.

1 Q. All right. You are not an
2 attorney; correct?

3 A. That is correct.

4 Q. Okay. You're generally familiar
5 with what a force majeure provision is,
6 however, in the course of your employment with
7 the City of Cleveland?

8 A. I've dealt with a little bit, but I
9 understand enough to the best of layperson's
10 understanding.

11 Q. Okay. You defer to the law
12 department for issues like that?

13 A. That is correct.

14 Q. Okay. But you understood, and we
15 can look at the language, that the force
16 majeure provision in the contract dealt with
17 things like earthquakes, floods, fires --

18 A. Acts of God.

19 Q. -- war, acts of God, thing of that
20 nature?

21 A. Correct. That is correct.

22 Q. Okay. At the time the City of
23 Cleveland entered into the contract, did it
24 consider a ballot initiative to be a force
25 majeure event?

1 A. At the time the law department
2 drafted the language around the force majeure,
3 we knew since the beginning, well, since I have
4 been involved with the City, there's always
5 been rumblings of the state's going to do
6 something. However, within my years of
7 experience with the City, nothing has come to
8 full circle.

9 Q. Okay. But, in other words, at the
10 time the City entered into the contract, did it
11 view a change in law, whether state, federal or
12 local, to be a force majeure event, like a
13 fire, a flood, an act of God or an act of war?

14 A. I would have to look at the clause
15 in the contract to --

16 Q. Okay. Take a look.

17 A. -- to get a better understanding.

18 Q. It's 1.11. Let's look at the
19 contract first, then we're happy to look at the
20 amendment.

21 (Discussion had off the record.)

22 Q. Let me ask a more specific
23 question. Looking at 1.11, that doesn't
24 address a change in local law; correct?

25 A. That is correct.

1 Q. It doesn't address a change in
2 state law?

3 A. Correct.

4 Q. But at the time the City entered
5 into the contract, it was aware that other
6 municipalities and states had enacted
7 legislation that would either limit or prohibit
8 the use of traffic cameras; correct?

9 A. That is correct.

10 Q. And so it was certainly a
11 possibility with the City of Cleveland's mind
12 at the time they entered into the contract,
13 that those things could happen? In other
14 words, that there could be a change in local or
15 state law that could prohibit or limit the use
16 of traffic cameras; correct?

17 A. That is correct.

18 Q. Okay. And the City was aware of
19 that risk when it signed the contract and
20 negotiated the contract?

21 A. Yes, the City and Xerox was aware
22 of it.

23 Q. And how did you know that Xerox was
24 aware of that?

25 A. There was actually movement at the

1 state level. So Xerox -- I believe Jim La -- I
2 am trying to remember the last name.

3 Q. We won't hold you to it. We won't
4 send him a copy of the transcript.

5 A. But, essentially, Jim Lazarski and
6 myself had conversations and they told us they
7 had folks lobbying in -- the state
8 representatives.

9 And further down my road, myself
10 and Commissioner Muhic of traffic actually went
11 down and testified before their state senate on
12 one of the house bills for photo enforcement.

13 Q. Okay.

14 A. So both parties were aware.

15 Q. Right.

16 And you recall Xerox saying to the
17 City of Cleveland, we understand if there's a
18 change in federal law, we understand if there's
19 a change in state law, you can't control that,
20 but you are still on the hook if there's a
21 change in local law. You recall them conveying
22 that to you; correct?

23 A. No, I don't recall that.

24 Q. Did you have discussions about who
25 would be responsible if there was a change in

1 local law?

2 A. No. All discussions centered
3 around what was happening at the state level.

4 Q. Okay. But sitting here, it makes
5 sense that Xerox wouldn't have a lot of upfront
6 costs, enter into a contract, only to have City
7 Council decide to change its mind two weeks
8 later, correct, and not being paid for its
9 upfront costs?

10 A. Correct.

11 Q. Okay. We've talked a little bit
12 about the amendment to the contract, but how
13 did it come to be, and we'll walk through this
14 in more detail, that six weeks later the City
15 of Cleveland decides it wants to change the
16 contract?

17 A. To the best of my knowledge -- I'm
18 not really sure. I know the initial draft was
19 completed, essentially, previously I had worked
20 with another lawyer on everything I did related
21 to safety, Nancy Kelly.

22 Nancy Kelly was assigned to some
23 other duties, so this was my first time working
24 with Jeff Marks. After the first draft was
25 done, it was signed. I know Jeff still had

1 some hesitation about some other additional
2 language he wanted in the contract. Myself and
3 the safety director have to lean towards Jeff's
4 experience and expert -- expertise in that
5 area. So there was a second draft completed
6 with language that draft -- Jeff Marks felt
7 more comfortable about.

8 Q. Okay. And I just want to make sure
9 I have an understanding.

10 At the time the City enters into
11 the contract, the City was already
12 contemplating, hey, we might need an amendment
13 to clean up some things or change some things?

14 A. Yes. I believe that the first
15 draft was completed, done, however, I believe
16 Jeff looked at it and said, you know, we still
17 need to clean X, Y and Z up. So we are going
18 to go ahead and do an amendment to the
19 contract.

20 Q. Okay. But putting that in the
21 timeline of contract's amended day one, the
22 amendment six weeks later, at the time the City
23 signs the contract are they already thinking,
24 hey, there's stuff we might need to clean up?

25 A. That part, I'm -- that's more of a

1 Jeff Marks, law department, questions for the
2 exact outline. For me the process of -- we
3 have a contract in place, operationally I can
4 run the program versus a legal question of,
5 okay, X, Y, Z language needs to be changed or
6 we need to tighten this up. That's something
7 that's more of a law department question.

8 Q. Yeah. Understood that, you know,
9 it is ultimately their responsibility. I just
10 want to get a sense of the timing. In other
11 words, it could be the case, oftentimes, there
12 are amendments to a contract. Sometimes folks
13 enter into a contract and then somebody raises
14 their hand and says, oh, my gosh, we've got to
15 clean this up.

16 There are other times, that I hear
17 you describing, but correct me if I am wrong,
18 that, you know, you are working, you want to
19 get the contract signed, but even at the time
20 you are signing the contract you are still
21 thinking, well, we need to do some edits here.
22 Is that how this particular contract and
23 amendment came about?

24 A. Again, so this contract was
25 probably drafted, say, in May, so probably two

1 months later Jeff might have saw something.
2 Again, he would be more of an expert to speak
3 about the drafting and the changes of the
4 contract than -- than I would be.

5 Q. Okay. What did you understand the
6 purpose of the amendment to be?

7 A. Again, I believe at the time Jeff
8 would make his changes, they were sent to me,
9 and then I would send them to Xerox. So it
10 wasn't that I was intimately involved with
11 discussions of, we need to make amendments, you
12 know, this paragraph, you know, should state
13 this or that. It was more so of, hey, I
14 reviewed this, I'm not comfortable with the
15 language here, let's change this.

16 Q. Okay. And, again, that's coming
17 from him to you rather than you to him?

18 A. That is correct.

19 Q. You weren't the driver of the
20 amendment?

21 A. That is correct.

22 Q. Okay. You didn't make -- you
23 weren't the one who said, we need to make an
24 amendment, we need to make these changes to the
25 contract, that was driven by the law

1 department?

2 A. That is correct.

3 Q. You are aware that one of the
4 changes incorporated in the amendment was to
5 the force majeure provision; correct?

6 A. That is correct.

7 Q. And if you want to go ahead and
8 turn to the amendment itself, again, if you
9 look at the top of the page there's a lot of
10 verbiage there, but it is 35 of 37. Do you
11 have 6.1.2 in front of you?

12 A. Correct.

13 Q. Okay. And, again, if you look at
14 the language there, it doesn't refer to a local
15 enactment, correct, it refers to a federal or
16 State of the Ohio enactment or regulation?

17 A. That is correct.

18 Q. And if the City of Cleveland -- the
19 City of Cleveland, I take it, drafted this
20 amendment?

21 A. That is correct.

22 Q. It wasn't drafted by Xerox;
23 correct?

24 A. Correct.

25 Q. And if the City of Cleveland wanted

1 to include the word local, they could have
2 included the word local; correct?

3 A. That is correct.

4 Q. In fact, there are instances, if
5 you want to turn to the contract itself, where
6 -- if you go to page 19 of 37, if you see
7 section 13.5, the last line says, applicable
8 state and local laws. Do you see that?

9 A. That's correct.

10 Q. Okay. If you also go down to the
11 next section, 14.1, it refers applicable
12 federal, state and local laws; correct?

13 A. Correct.

14 Q. So just as the word local was used
15 in the original contract, it could have been
16 used in the amendment, but wasn't; correct?

17 A. Correct.

18 Q. And if you look at section 13.5, if
19 you'll just read that to yourself?

20 A. (Witness complies.)

21 Okay.

22 Q. Okay. And in this provision, the
23 City indicated that it was warranting, that it
24 would comply with applicable state and local
25 laws; correct?

1 A. That is correct.

2 Q. After the ballot initiative, did
3 the traffic camera program comply with local
4 laws?

5 A. Could you clarify that question?

6 MR. NATHANSON: Objection.

7 I don't think he is qualified to
8 answer that -- that question. Which number are
9 we -- are we on right now in the 30(b)(6)
10 deposition?

11 MR. BRENNAN: The first topic. The
12 negotiation of the contract and entering into
13 the contract.

14 MR. NATHANSON: You are asking him
15 about the effective and filed amendment and
16 whether that's in compliance with local law,
17 that's not part of number one.

18 MR. BRENNAN: Okay. Look at six as
19 well.

20 Q. Following the ballot initiative --

21 MR. NATHANSON: I -- I'm sorry. I
22 don't think this qualifies under number six
23 either. It was --

24 MR. BRENNAN: Okay.

25 MR. NATHANSON: -- within section

1 four of the contract.

2 MR. BRENNAN: Your objection is
3 noted.

4 Q. Following the passage of the ballot
5 initiative did the traffic camera program
6 comply with local laws?

7 A. The ballot initiative allowed for
8 the use of photo enforcement cameras under a
9 strict set of parameters.

10 Q. Okay. So following the ballot
11 initiative the contract -- the City of
12 Cleveland would still in compliance with local
13 laws for the traffic camera program?

14 A. Yes.

15 Q. And, in fact, after the ballot
16 initiative, the City could have continued to
17 use traffic cameras; correct?

18 A. No.

19 Q. The City wasn't allowed to use
20 traffic cameras?

21 A. At the time, after the ballot
22 initiative, the ballot initiative clearly
23 stated that officers had to physically hand
24 motorists the ticket after the violation
25 occurred.

1 At that time, Xerox had no way of
2 printing tickets from a fixed camera in order
3 for this to even work. So even if November 5th
4 the City decided, we are going to place an
5 officer at every camera, cameras could not
6 print tickets so, therefore, we would be in
7 violation of that charter amendment.

8 Q. Did the City of Cleveland ask Xerox
9 whether it could implement a system to have
10 tickets be printed onsite?

11 A. No, that was not the -- no.

12 Q. Okay. You're not aware, sitting
13 here today, whether Xerox could have done that?
14 In other words, print the ticket right from the
15 location?

16 A. Again, if we had an officer to put
17 at each camera -- that was never the intent of
18 the program. We would never -- it's cost
19 prohibitive to put an officer at the camera 24
20 hours a day to run a camera.

21 Q. But the goal isn't to generate
22 revenue here, the goal is to save lives?

23 A. Correct.

24 Q. Okay. But you didn't ask Xerox
25 whether they could in fact go ahead and print

1 tickets onsite; did you?

2 A. No, we did not.

3 Q. Okay. Did you give consideration
4 to whether the City could continue to use the
5 traffic cameras and instead of issuing
6 citations to violators that said you have to
7 pay a fine, the City could issue a notice to
8 violators saying you violated the law, next
9 time you could be subject to a ticket and other
10 penalties?

11 A. That process happened when a new
12 camera is put up. We had, essentially, a
13 warning period of two weeks where violators
14 received that notice.

15 Again, the legislation clearly --
16 the City's legislation clearly states that
17 there is a fine for running the red light. So
18 to me would be doing a disservice to the
19 legislation and the intent of the program by
20 just sending out warning notices.

21 Q. Okay. Have you studied whether --
22 has the City of Cleveland studied whether
23 warning notices are effective in reducing
24 accidents and death?

25 A. No. Again, when we sent the

1 warning notices out, that was only for a
2 two-week period at fixed locations.

3 Q. Okay. So at the time the City of
4 Cleveland decided to turn off the cameras, it
5 didn't give consideration to whether continuing
6 to issue non-fine citations would help reduce
7 accidents and save lives?

8 A. This was a revenue neutral
9 contract. So submitting out non-fine
10 revenues -- I mean, submitting out non --
11 non-fine citations, essentially, would be
12 detrimental to the business model for Xerox.

13 Q. Well, the business model of Xerox
14 is to get paid for the traffic cameras?

15 A. Correct. However, if we are
16 sending out non-fine warning notices to
17 everybody for the rest of the life of the
18 contract, we would run into, essentially, a
19 period where no revenue is being generated so
20 the City is not able to pay Xerox.

21 Q. Okay.

22 A. And at the end of the term of the
23 contract, I believe, if there is a shortfall
24 both parties agreed to walk away.

25 Q. Understood.

1 Do you know when that would occur?
2 In other words, when the City would break even?

3 A. If we're sending out non -- the
4 City would never break even.

5 Q. Let's step back.

6 The City made 15 million dollars
7 over the course of this contract?

8 A. I don't have the financial
9 information in front of me.

10 Q. Ballpark, does that make sense to
11 you?

12 MR. NATHANSON: If you know.

13 A. I don't know. So the Clerk of
14 Courts deals with the collection of -- of money
15 from this program.

16 Q. Okay. You don't know, sitting here
17 today, as a representative of the City of
18 Cleveland, you don't know if the City of
19 Cleveland made one million, 2 million, 10
20 million or 15 million dollars off this
21 contract?

22 A. Again, my responsibilities were for
23 operations. I wasn't tasked with knowing, you
24 know, this month we made 2 million dollars,
25 next month we made this. That was more of a

1 Clerks of Courts function for collections.

2 Q. Okay. Well, you knew the City of
3 Cleveland wasn't in the red?

4 A. That's a fair statement.

5 Q. It was making money off the
6 program?

7 A. That's a fair statement.

8 Q. Okay. And the way the contract
9 works, as you described it, if in month one the
10 City has a one million dollar surplus, month 2
11 the program doesn't generate any revenue, the
12 City of Cleveland still has to pay Xerox until
13 such time as the City gets net neutral?

14 A. That is correct.

15 Q. Okay. And sitting here today, do
16 you know whether or not the City of Cleveland
17 is net neutral on the contract?

18 A. Again, that's something out of my
19 bailiwick of responsibilities.

20 Q. Okay. But was that a consideration
21 when the City of Cleveland decided to stop
22 paying Xerox? In other words, are we net
23 neutral or can we consider to paying Xerox
24 until we get to net neutral?

25 A. Again, that's something out of my

1 -- out of my responsibilities.

2 Q. You're the person who communicated
3 to Xerox to turn off the cameras; right?

4 A. That is correct.

5 Q. To stop the program?

6 A. That is correct.

7 Q. And at the time you made that
8 directive to Xerox you didn't know whether
9 Cleveland still had monies in its coffers to
10 pay Xerox; fair?

11 A. That is fair.

12 Q. And sitting here today, you don't
13 know whether the City of Cleveland had millions
14 of dollars to pay Xerox before it would get to
15 net neutral; correct?

16 A. That is correct.

17 Q. Okay. And after the ballot
18 initiative of November 4th, the City of
19 Cleveland asked Xerox to continue to process
20 tickets as we've discussed; right?

21 A. As part of the monthly fixed fee,
22 that was part of the services. So any tickets
23 that happened before the ballot initiative,
24 anything that happened in October, should have
25 still been processed.

1 Q. Okay. Where does it say it in the
2 contract that once Xerox terminates -- once the
3 City of Cleveland terminates the contract,
4 Xerox still has to process tickets?

5 A. I don't believe the City ever
6 terminated the contract.

7 Q. The City of Cleveland stopped
8 paying under the contract?

9 A. The City never terminated the
10 contract.

11 Q. Well, isn't the one obligation of
12 the City under the contract to pay Xerox?

13 A. When the cameras are operational,
14 yes.

15 Q. Okay. Well, and that's the only
16 thing the City has to do under the contract is
17 pay Xerox; correct? The City doesn't have to
18 refurbish cameras, the City doesn't have to
19 replace cameras, the City doesn't have to do
20 other things, it's one obligation is to pay
21 Xerox; correct?

22 A. Correct.

23 Q. Okay. And the City hasn't been
24 doing that since November of 2014; correct?

25 A. That is correct.

1 Q. And, again, the City made that
2 decision without knowing whether or not it was
3 net neutral on the contract?

4 A. Again, I would not be in the best
5 position to comment on that.

6 Q. Okay. And you said Xerox would
7 have to keep continuing to process tickets
8 under its monthly fee, but the City of
9 Cleveland wasn't paying that monthly fee;
10 correct?

11 A. The monthly fee I was speaking
12 about would be, say, for the month of October,
13 you could receive a photo enforcement ticket
14 October 31st and it may take six weeks for it
15 to go through the complete process.

16 Q. Right.

17 A. And any late notices that go out.
18 However, that ticket was part of that October
19 monthly fee for operating those cameras.

20 Q. Okay. Can you point me to a
21 provision in the contract that says, once the
22 City of Cleveland stops paying Xerox, Xerox
23 still has to process tickets?

24 A. If the City paid Xerox for October,
25 that's part of October's services delivery.

1 Q. And if I could just show the
2 members of the jury the provision in the
3 contract that says, after the City of Cleveland
4 stops paying, Xerox still has to process
5 tickets.

6 A. And, again, I would say, if the
7 City paid Xerox for services for the month of
8 the October, Xerox should perform those
9 services for October.

10 Q. And you believe -- do you know how
11 many millions the City of Cleveland made after
12 November 4th?

13 A. No, I do not.

14 Q. Okay. Why did the City of
15 Cleveland continue to process tickets after
16 November 4th?

17 A. Again, anything that was issued, I
18 believe, November -- probably November 3rd at
19 11:59 p.m. was still considered a good ticket.
20 Anything after -- from 12 a.m., November 4th,
21 election day on, was told to be voided out.

22 Q. Okay. But the City of Cleveland
23 continued to process tickets to generate
24 revenue; correct?

25 A. No. These were good violations

1 that occurred while the program was allowable.

2 Q. Which would have the effect of
3 generating millions of dollars for the City of
4 Cleveland?

5 A. Again, these were violations that
6 occurred before the charter amendment was
7 approved.

8 Q. Understood.

9 But sitting here today, are you
10 aware that the City made almost 4 million
11 dollars after November 4th off of tickets for
12 to violations prior to November 4th?

13 A. If they were part of the November
14 -- October queue, then that's still why
15 the program was valid. So that's --

16 Q. I'm asking you a dollars amount,
17 not whether it's right, wrong or indifferent,
18 but are you aware that the City of Cleveland
19 received millions of dollars in revenue after
20 November 4th, 2014, as a result of the traffic
21 cameras?

22 A. Again, I don't deal with the
23 financial aspects of the program overall,
24 that's not mine, that's not what I'm tasked
25 with, that's not my job.

1 Q. Okay.

2 A. So, yes, they could have.

3 Q. And did the City of Cleveland pay
4 Xerox for services Xerox performed in November?

5 A. To the best of my knowledge, no.

6 Q. Okay. And you're aware that the
7 City of Cleveland's obligated to pay invoices
8 within 30 days; correct?

9 A. Correct.

10 Q. The City of Cleveland has not paid
11 invoices within 30 days following the ballot
12 initiative; correct?

13 A. Correct.

14 Q. In fact, there's millions of
15 dollars that Xerox claims it's owed but the
16 City of Cleveland hasn't paid it for invoices
17 issued to the City of Cleveland; correct?

18 A. Correct.

19 Q. Do you think it's -- on behalf of
20 City of Cleveland, do you think it's fair that
21 the City of Cleveland has made millions of
22 dollars off the program and Xerox has lost
23 millions of dollars off the program?

24 A. To the best of my knowledge, the
25 City and Xerox had this relationship since

1 2005, so they both made millions of dollars off
2 of this program.

3 Q. I'm asking about the contract.

4 Do you think it's fair that under
5 the contract the City of Cleveland has made
6 more than tens of millions of dollars and Xerox
7 has lost millions of dollars?

8 MR. NATHANSON: Objection.

9 Is this his personal opinion or as
10 a City representative?

11 MR. BRENNAN: City representative.

12 A. Again, I will say the same thing.
13 The City -- since the charter amendment, the
14 City has lost millions of dollars also by not
15 being able to operate the program. And Xerox
16 has since removed those cameras and reused
17 them, so.

18 Q. Well, the City of Cleveland hasn't
19 lost millions dollars, the City of Cleveland
20 just hasn't made millions of dollars; correct?

21 A. If you want to make that assertion.
22 It's the same. We could say Xerox removed the
23 equipment, so they, in a sense, made millions
24 of dollars somewhere else by reusing that
25 equipment.

1 Q. Well, they could have -- your
2 understanding is that Xerox used cameras for
3 other cities and it wouldn't have been able to
4 enter into a contract in other cities?

5 A. No. No. What I was asserting is
6 that the upfront costs that they had had with
7 the City, when they removed that equipment,
8 they were able to refurbish it and place it
9 somewhere else in another city. So that all of
10 the sudden decreased their upfront costs on
11 starting a new program.

12 Q. Okay. You are not aware that Xerox
13 could have a traffic camera program in
14 Cleveland and 100 other cities and it doesn't
15 matter whether or not the City of Cleveland
16 terminates the program or not, it can still
17 operate that program elsewhere; correct?

18 A. Again, the City didn't terminate
19 the program, but that's not what I was --

20 Q. Okay.

21 A. -- making an assertion about.

22 Q. City of Cleveland made millions of
23 dollars off this contract?

24 A. Correct.

25 Q. Okay. Xerox has lost millions of

1 dollars; correct?

2 A. Under --

3 Q. That would be your expectation?

4 MR. NATHANSON: Object.

5 If you know.

6 A. Yeah. That's something -- I don't
7 know Xerox's financials.

8 Q. Would it -- as a representative of
9 the City of Cleveland, do you think it's fair
10 that the City of Cleveland has made millions of
11 dollars off this contract and Xerox has lost
12 millions of dollars?

13 A. Again, with any photo enforcement
14 program there's associated risks that both
15 parties agree to.

16 Q. Is your answer yes or no? Is it
17 fair that Xerox has lost millions and City of
18 Cleveland has made millions of dollars? I just
19 want to tell a jury what your view is.

20 A. Again, I don't see it under that
21 interpretation. I think there were risks
22 associated with both parties with operating
23 this type of program.

24 Q. Who bore the risk? Who made
25 millions and who lost millions?

1 A. Again, I ascertain that both --
2 both sides.

3 Q. Okay. The City of Cleveland made
4 millions of dollars, Xerox lost millions of
5 dollars; is that fair? Simple question for the
6 jury.

7 A. And, again, I state that both
8 parties lost things with this charter amendment
9 moving forward and being approved.

10 Q. You lost the possibility of making
11 millions of dollars, Xerox lost the possibility
12 of breaking even; correct?

13 A. That's under your interpretation.

14 Q. What's your interpretation?

15 MR. NATHANSON: Objection.

16 Asked and answered.

17 A. Yes, that both -- both sides lost
18 the opportunity to gain revenue.

19 Q. Who's in the red and who's in the
20 black under this contract?

21 MR. NATHANSON: Objection.

22 Asked and answered.

23 A. Again, I don't know Xerox's
24 financials, so I can comment on Xerox.

25 Q. Okay. You didn't give

1 consideration to whether Xerox lost money,
2 whether the City of Cleveland should pay its
3 termination fee?

4 A. Again, the City did not terminate
5 the contract.

6 Q. The City is not paying under the
7 contract?

8 A. The City's never sent out a letter
9 of termination to Xerox.

10 Q. But you understand that nonpayment
11 is an incident of default under the contract?

12 A. Again, I'm a lay person, I try and
13 understand the contract, but, again, a charter
14 amendment was approved, the City did not send
15 any correspondence to Xerox saying, we are
16 terminating the contract.

17 Q. Because they didn't want to pay the
18 termination fee?

19 A. Again, a charter amendment --

20 Q. Simple question. The City decided,
21 we're not going to formally say we terminated,
22 we don't want to use the cameras, but we don't
23 want to say we terminated because we don't want
24 to make a termination fee; correct?

25 MR. NATHANSON: Objection.

1 The reasoning for -- for that issue
2 was made upon the advice of counsel, so he
3 can't speak to the discussion.

4 MR. BRENNAN: That's great if he
5 wants to assert the advice of counsel.

6 A. I want to assert the advice of
7 counsel.

8 Q. You don't know why the City decided
9 not to pay the termination fees?

10 A. In the City's opinion, we were not
11 terminating the contract for conveyance.

12 Q. Were you terminating the contract?

13 A. No, the City was not terminating
14 the contract.

15 Q. The contract's still ongoing?

16 A. That is correct.

17 Q. Okay. So if the contract's still
18 ongoing and Xerox is entitled to a monthly fee,
19 I take it the City is paying the monthly fee?

20 A. The monthly fee was for cameras
21 that are operational. Right now the cameras
22 are not operational.

23 Q. And the cameras can be operational,
24 they can issue citations that aren't fines;
25 correct?

1 A. (Pause.)

2 Q. You decided to turn off the
3 cameras, not Xerox; correct?

4 A. The City made that decision.

5 Q. Okay. So the City decided to make
6 the cameras non-operational; correct?

7 A. Based off the charter amendment;
8 correct.

9 Q. Okay.

10 MR. NATHANSON: Can we take a break
11 soon?

12 MR. BRENNAN: Yeah, we've been
13 going an hour, why don't we take a quick break?

14 (Short recess had.)

15 Q. Thank you. Sir, are you ready?

16 A. Yes.

17 Q. Okay. Who made the decision on
18 behalf of the City of Cleveland to turn off the
19 cameras?

20 A. The law department made the
21 decision.

22 Q. Why did they make that decision?

23 A. Based on the language of the
24 charter amendment the cameras were turned off
25 per the law department.

1 Q. Okay. Who conveyed that to you
2 from the law department?

3 MR. NATHANSON: Objection.

4 A. Safety Director Mike McGrath
5 conveyed the decision from the law department
6 to turn off the cameras to me.

7 Q. You did not have direct
8 communications with the law department about
9 that?

10 A. No, I did not.

11 Q. What did Mr. McGrath say to you?

12 A. Mr. McGrath told me to turn the
13 cameras off.

14 Q. Did he tell you why?

15 A. No. He said he spoke with the law
16 department and to turn the cameras off.

17 Q. Okay. And when did that
18 conversation take place?

19 A. To the best of my recollection,
20 that conversation probably took place about --
21 it was 7:50-ish on -- that would have been
22 November 5th of 2014.

23 Q. A.m.?

24 A. Yes, a.m.

25 Q. Okay. So the ballot initiative

1 passes on the 4th, morning of the 5th you two
2 have a conversation and he says turn off the
3 cameras?

4 A. I reached out to the director and
5 said the ballot initiative passed, what is the
6 next step? What are we doing?

7 Q. And the response was?

8 A. He was going to talk to the law
9 department and, subsequently, after he talked
10 to the law department, I received an e-mail
11 saying to turn off the cameras.

12 Q. And the e-mail came from Mr.
13 McGrath?

14 A. That is correct.

15 Q. And the communication about why to
16 do it, it was solely based on the ballot
17 initiative?

18 A. Again, that's a conversation the
19 director had with the law director on why to do
20 it.

21 Q. I know, but if you look at topic
22 eight, you are the designated witness on the
23 City's decision to stop paying. So the
24 question to you, as the witness on the topic
25 is, why did the City decide to stop paying

1 Xerox its monthly fee?

2 A. Again, that was a decision from the
3 law department.

4 Q. It's not a who question. It's a
5 why.

6 Why did the City stop paying Xerox
7 its monthly fee?

8 A. Again --

9 MR. NATHANSON: Objection. That's
10 privileged.

11 Q. If that's your answer, I'm entitled
12 to that answer.

13 A. Yes. That's privileged
14 conversation --

15 Q. Okay.

16 A. -- with counsel.

17 Q. Do you have any non-privileged
18 reason of why the City of Cleveland decided to
19 stop paying Xerox its monthly fee?

20 A. No, I do not.

21 Q. Okay. The City -- and when you say
22 I, again, you are speaking on behalf of the
23 City of Cleveland?

24 A. Correct.

25 Q. There is no non-privileged reason

1 why the City decided to stop paying Xerox its
2 monthly fee; correct?

3 A. Correct.

4 Q. If you turn to the contract and if
5 you'll put in front of you -- again, if you go
6 to 13 of 37.

7 A. (Witness complies.)

8 Okay.

9 Q. Okay. It reads, the City, in
10 accordance with the terms and conditions set
11 forth in Exhibit 1, shall pay all compensation
12 to contractor under this LSA. All invoices
13 from the contractor shall be promptly processed
14 and payment will be issued as soon as
15 practicable after receipt of invoice with a
16 goal of not more than 30 days. Did I read that
17 accurately?

18 A. Correct.

19 Q. Has the City made all payments
20 within 30 days owed to Xerox?

21 A. Prior to the charter amendment,
22 yes.

23 Q. Following the charter amendment?

24 A. Again, the law department made the
25 decision and no payments have been made since

1 the charter amendment.

2 Q. Okay. That's my question then.
3 Have payments been made since the charter
4 amendment?

5 A. No payments have been made since
6 the charter amendment.

7 Q. The City hasn't been paying
8 pursuant to 4.0 since the charter amendment?

9 A. That is correct.

10 Q. The City has one obligation under
11 the contract, which is to make payments, and
12 the City hasn't been doing that; correct?

13 A. Correct.

14 Q. Is the City planning on renewing
15 the contract?

16 A. Not at this time.

17 Q. Okay. Is that something that's
18 being considered?

19 A. If there's another movement to
20 change the charter amendment, that will
21 probably be something that the City would
22 greatly entertain.

23 Q. But it's your testimony, on behalf
24 of the City of Cleveland, that the City of
25 Cleveland hasn't terminated the contract?

1 A. Correct, the City has not
2 terminated the contract.

3 Q. And one of the rights the City has
4 under the contract is to extend the contract;
5 correct?

6 A. That is correct.

7 Q. Okay. And the City is leaving that
8 issue open for the time being?

9 A. The City sees this as a living,
10 breathing document, so the contract is still in
11 place right now.

12 Q. And you would agree with me that
13 the obligation to pay is a material obligation
14 under the contract?

15 A. Could you rephrase?

16 Q. The obligation to the City of
17 Cleveland to pay Xerox is a material
18 obligation? It's an important obligation under
19 the contract?

20 A. It's one of the clauses in the
21 contract.

22 Q. And it's a material clause? I
23 mean, there is no bigger clause from Xerox's
24 perspective, other than the City's obligation
25 to pay; correct?

1 A. That's Xerox's interpretation.

2 Q. Well, do you consider the
3 obligation to pay to be a material provision or
4 an immaterial provision?

5 A. Again, this clause, just like
6 making sure the cameras are operational --

7 Q. That's material to the City of
8 Cleveland?

9 A. Correct.

10 Q. Okay. And being paid is material
11 to Xerox?

12 A. If Xerox wants to make that claim.

13 Q. I'm asking you as the person who is
14 the designated witness on the negotiation and
15 hearing into the contract, is the obligation of
16 the City of Cleveland to pay Xerox a material
17 part of the contract or not?

18 A. It's a clause in the contract.

19 Q. Is it material, sir?

20 A. To say it's material to Xerox,
21 that's something I can't answer.

22 Q. I'm asking, is it material to the
23 City of Cleveland?

24 A. I believe it's a weighted clause in
25 the contract.

1 Q. It's a what clause?

2 A. It's a weighted clause in the
3 contract, just like all these other clauses in
4 the contract, it is a task or a duty to be
5 performed.

6 Q. It's a yes or no question. Is the
7 City's obligation to pay Xerox a material term
8 of the contract, yes or no?

9 A. I guess, what is your definition of
10 material? I'm not --

11 Q. Important. Having significance.
12 Critical. Foundation of the contract. Any and
13 all of the above, is it a material provision of
14 the contract that the City of Cleveland pay
15 Xerox?

16 A. I think the City would make the
17 argument that all the clauses are -- in this
18 contract are material --

19 Q. Including that one?

20 A. -- not just that one.

21 Q. But it would include that one?

22 A. Including all clauses, yes.

23 Q. Yes.

24 So the obligation of the City of
25 Cleveland to pay Xerox, among others, is a

1 material portion of the contract?

2 A. The whole is material, yes.

3 Q. Including that portion?

4 A. Including that portion.

5 Q. Okay. Let's just put a bow on it.

6 Okay?

7 So the obligation of the City of
8 Cleveland to pay Xerox --

9 MR. NATHANSON: Objection.

10 Asked and answered.

11 Q. -- is a material provision in the
12 contract?

13 A. I've already answered that.

14 Q. And your answer is?

15 A. That the entire contract is
16 material to the City's definition.

17 Q. Sir, you know, I don't want to be
18 here all day, I'm happy to, I have no other
19 plans today. Okay? I hope you don't because
20 at this pace we are going to be here a lot
21 longer than I expected.

22 Simple question, simple answer. Is
23 the obligation of the City of Cleveland to pay
24 Xerox a material provision of the contract?

25 A. And, again, I've answered that.

1 Q. What's your answer? I don't know
2 your answer. Is your answer yes?

3 A. The City considers the personnel
4 clause to be material. The City -- it's a
5 contract. It's a living, breathing document to
6 us. So there's no one clause that we will say
7 this is --

8 Q. I'm not asking --

9 A. -- more critical, more significant.

10 Q. I'm not asking if it is more
11 material.

12 Is the obligation of the City of
13 Cleveland to pay Xerox under the contract a
14 material provision of the contract?

15 A. Yes.

16 Q. Okay. Thank you.

17 MS. DINEHART: Can we have one
18 minute with him in the hall, Terry, just off
19 the record, just to help all of us? Is that
20 okay?

21 MR. BRENNAN: Yes, that's fine.

22 MS. DINEHART: Thank you.

23 (Discussion had off the record.)

24 Q. Sir, does the City of Cleveland
25 consider Xerox to be in default under the

1 agreement?

2 A. The City does not consider Xerox to
3 be in default under the agreement.

4 Q. You would agree with me that
5 there's no provision written in the agreement
6 that says the City of Cleveland can direct
7 Xerox to turn off cameras; correct?

8 A. I believe as the City operating the
9 program they have that right.

10 Q. That wasn't my question.

11 MR. BRENNAN: Can you read the
12 question back to the witness, please?

13 (Record read.)

14 A. To the best of my knowledge, that
15 is correct.

16 Q. And, as I think we have discussed,
17 and I'm not trying to re-plow the same field,
18 the City of Cleveland has not been making
19 payment to Xerox since the ballot initiative,
20 since 2014; correct?

21 A. That is correct.

22 Q. Why has the City of Cleveland not
23 paid Xerox for services Xerox performed in
24 November of 2014?

25 MR. NATHANSON: Same objection as

1 before. The actual decision from the law
2 department was privileged.

3 MR. BRENNAN: Which is fine.

4 Q. Can you think of any non-privileged
5 reason why the City of Cleveland has not paid
6 Xerox for services performed on or after
7 November 2014?

8 A. No, I cannot.

9 Q. Okay. The -- I want to direct your
10 attention to another provision of the
11 agreement. If you turn to page 26 of 37.

12 A. (Witness complies.)

13 Q. If you see there is a section E
14 2.1?

15 A. Yes.

16 Q. And that gives the City of
17 Cleveland the right to charge contractor, being
18 Xerox, \$500 per day, per unit that is not
19 operational; correct?

20 A. Correct.

21 Q. Okay. Has the City of Cleveland
22 sought to charge Xerox those amounts?

23 A. Under this contract, no.

24 Q. And that's because it was the City
25 of Cleveland's decision, not Xerox's, to make

1 cameras non-operational; correct?

2 A. No.

3 Q. No, my statement is not correct?

4 A. Correct. This clause indicated if
5 a camera was broken and Xerox had not fully
6 repaired that camera, that then there would be
7 penalty charges relating to Xerox until that
8 camera was returned to operation. This dealt
9 with malfunctioning cameras.

10 Q. Well, it just says operational.
11 Operational means working for whatever reason;
12 right?

13 A. Correct.

14 Q. And cameras are not working in the
15 City of Cleveland; correct?

16 A. Cameras were shut off in the City
17 of Cleveland, correct.

18 Q. And the reason the City of
19 Cleveland is not trying to charge Xerox for
20 that is because it was the City of Cleveland's
21 decision and not Xerox's to make the cameras
22 non-operational; correct?

23 A. No.

24 Q. Who made the decision to make the
25 cameras non-operational?

1 A. Your statement regarding this
2 clause relates to cameras that are
3 malfunctioning. In previous contracts we had
4 issues where cameras were malfunctioning.
5 There were no way for the City to, essentially,
6 hold a penalty to Xerox for cameras --
7 equipment that was malfunctioning.

8 So this clause, in the City's
9 opinion, does not relate to the City telling
10 Xerox to turn off the cameras.

11 Q. Operational doesn't mean
12 operational?

13 A. Again, when we speak of
14 operational, we are speaking of a
15 malfunctioning camera.

16 Q. Why didn't you use the word
17 malfunctioning when drafting the contract?

18 A. Again, this is speaking to the
19 drafting language of -- which I'm not a lawyer.
20 I know the intent, but I'm not the lawyer who
21 drafted the contract.

22 Q. Okay. But regardless, it was the
23 City of Cleveland's decision to make the
24 cameras non-operational, not Xerox's; correct?

25 A. Correct.

1 Q. And the reasons behind that
2 decision are all privileged?

3 A. That is correct.

4 Q. The City of Cleveland believes it's
5 excused from paying Xerox any further monies
6 under the contract; fair?

7 A. To the best of my knowledge, those
8 conversations of what should be paid and not
9 paid are with the law department, so that would
10 be privileged.

11 Q. Okay. But sitting here today, you
12 do know and you do understand, that's the
13 position, that's the understanding of the City
14 of Cleveland, that we are not going to pay
15 Xerox --

16 MR. NATHANSON: Objection.

17 Q. -- any further monies under the
18 contract?

19 MR. NATHANSON: Objection.

20 If you know. You can answer if you
21 know.

22 A. Yeah, I don't know.

23 Q. Okay. Well, you're here testifying
24 on that subject on behalf of the City of
25 Cleveland. So I just, again, want to make sure

1 if it's something that's privileged, it's
2 privileged and I'm not going to go into it.
3 But in response to number 13, if you have it in
4 front of you, please identify all of the
5 factual bases for the City's assertion that
6 it's excused from paying Xerox the outstanding
7 fees under the traffic camera program?

8 A. And, again, that would be a
9 privileged conversation with the law
10 department.

11 Q. So any and all bases, per the
12 City's decision, are privileged?

13 A. Those discussions were had with
14 direct counsel with the law department.

15 MR. NATHANSON: Is that yes or no?

16 A. So yes, it is a privileged
17 conversation.

18 Q. Okay. And, again, I just -- any
19 and all of the bases for the City's position
20 that it is excused from paying Xerox are
21 privileged?

22 A. Yes.

23 Q. Did you have any input into those
24 decisions, the decisions, one, to turn off the
25 cameras or, two, to not pay Xerox going

1 forward?

2 A. The decision to turn off the
3 cameras, as I mentioned before, I reached out
4 to the director and apprised him that the
5 charter amendment had been passed and what are
6 our next steps.

7 Q. Okay. But did you make any
8 recommendation? Did you go to anyone and say,
9 we should turn off the cameras, we shouldn't
10 turn off the cameras? Did you weigh in on that
11 issue?

12 A. No, I did not.

13 Q. Okay. Did anyone from the City of
14 Cleveland, not in the law department, weigh in
15 on that issue?

16 A. No. As I stated, that was a direct
17 -- to Director McGrath who then talked to the
18 law director.

19 Q. Okay.

20 A. In my best recollection. I don't
21 know, he might have talked to somebody else.
22 But, again, from my standpoint, I talked to the
23 director, the director said, I'm going to talk
24 to the law department.

25 Q. Yeah. And, again, I want you to

1 put back on the 30(b)(6) hat, if you have taken
2 it off and, hopefully, you haven't, that's been
3 the entirety of this deposition. But were
4 there any non-privileged recommendations or
5 communications about turning off the cameras?

6 A. No, there was not.

7 Q. Were there any non-privileged
8 recommendations or communications about not
9 paying Xerox its fees going forward?

10 A. No, there was not.

11 Q. You understand that the termination
12 for convenience fee is not a fixed fee, it
13 changes over the life of the contract; correct?

14 A. That is correct.

15 Q. And the reason it changes over the
16 life of the contract is because as the contract
17 goes forward, Xerox starts to recoup some of
18 its upfront costs; correct?

19 A. That's correct.

20 Q. So if the contract is terminated
21 day one, the termination for convenience fee is
22 going to be substantially greater than if it's
23 terminated the day before the contract was
24 naturally to expire; correct?

25 A. Correct.

1 Q. Did you have an understanding in
2 November of 2014 the ballpark amount of the
3 termination fee under the contract?

4 A. No, I did not.

5 Q. Did you understand it to be
6 millions of dollars?

7 A. No, I did not.

8 Q. Were there any non-privileged
9 communications about whether or not to pay the
10 termination fee set forth in the contract?

11 A. No, there weren't.

12 Q. After the ballot initiative passed,
13 were there any non-privileged communications
14 about challenging the legalities of the ballot
15 initiative within the City of Cleveland?

16 A. I believe there -- going before the
17 ballot initiative was passed, there were some
18 questions about the collections of the
19 signatures and the time period that they were
20 submitted. So I know those discussions were
21 had, but I'm not aware of any questioning the
22 legality after the fact.

23 Q. Okay. So there were some question
24 -- there was some non-privileged communications
25 before the ballot initiative was passed, as far

1 as whether we should even put it on the ballot,
2 whether, you know, it is a valid item to be put
3 forth to the voters?

4 A. I believe City Council was mandated
5 that if the voters fill out the paperwork for
6 referendum that its the duty that the City
7 Council must put that on the ballot.

8 Q. Okay. Were you personally involved
9 in any discussions on the subject?

10 A. No, council had a council meeting.
11 So at that point, when it became a City
12 referendum that dealt specifically with City
13 Council. So at that point I, myself, being a
14 representative of the City, were removed from
15 those conversations. So that's a direct City
16 Council function, to put ballot initiatives
17 before the voters.

18 Q. And, again, after the ballot
19 initiative was passed, did the City of
20 Cleveland have any non-privileged
21 communications about whether or not to
22 challenge the legality of the ballot
23 initiative?

24 A. To the best of my knowledge, I
25 don't recall any of those conversations.

1 Q. It is fair to say you are giving
2 testimony on behalf of the City of Cleveland,
3 not just in your personal capacity?

4 A. Correct.

5 Q. After the ballot initiative was
6 passed, we've talked a little bit about this,
7 but I just want to make sure, did the City of
8 Cleveland give any consideration to using the
9 traffic cameras for surveillance?

10 A. No. At that point we believed that
11 -- our belief that if they cut the cameras off
12 the surveillance component would be cut off
13 also.

14 Q. Well, when you say, if they cut the
15 cameras off?

16 A. If we instructed Xerox to cut the
17 cameras off, that meant the cameras were
18 completely off, so there would be no capability
19 of using the surveillance capability.

20 Q. Correct. But before that decision
21 was made or even after that decision was made,
22 was there any thought within the City of
23 Cleveland, hey, perhaps we can use this cameras
24 for another purpose? Maybe we can use them for
25 surveillance?

1 A. The City currently have a video
2 surveillance program that's up and running and
3 the monthly fees that the City would have to
4 pay to run that type of surveillance the --
5 would greatly outweigh what we would try to
6 accomplish. So it wouldn't be beneficial to
7 the City to try to use that technology for
8 video surveillance.

9 Q. And I'm not asking about any
10 reasoning for doing that or not doing that.
11 The simple question is, either before or after
12 the cameras were turned off, did the City of
13 Cleveland contemplate perhaps using the cameras
14 for surveillance purposes, yes or no?

15 A. No.

16 Q. And you said something to the
17 effect, and I don't want to put words in your
18 mouth, that it wouldn't be consistent with the
19 City's purpose. But surveillance serves a
20 safety function; does it not?

21 A. That is correct.

22 Q. But notwithstanding that, the City
23 of Cleveland didn't give thought to whether or
24 not the traffic cameras can be used for
25 surveillance, not issuing tickets, and whether

1 that might serve public safety; correct?

2 A. Can you rephrase that?

3 Q. Yeah.

4 Either before or after the City of
5 Cleveland made the decision to turn off the
6 cameras, the City -- I believe, it's your
7 testimony, didn't give thought or contemplation
8 whether or not it should use the traffic
9 cameras for surveillance rather than issuing
10 tickets, and whether that use of surveillance
11 would further public safety; correct?

12 A. Yes, that is correct.

13 Q. Have you ever served in any of the
14 armed forces?

15 A. No, I have not.

16 Q. Okay. I will represent to you that
17 the armed forces place values on human life.
18 Okay? So, for example, pilots in the Navy or
19 the Air Force might be instructed, if you are
20 going in a spin pattern, we want you to eject,
21 even if that means losing a plane or tens of
22 millions of dollars, rather than try to stay --
23 manning the pilot (sic) and, perhaps, save the
24 aircraft.

25 Has the City of Cleveland done any

1 sort of similar calculation, you know, what the
2 value is of having a traffic camera program
3 versus what the value is of saving lives of its
4 residents?

5 A. To best of my knowledge, I don't
6 recall any of those conversations.

7 Q. You've never heard discussions to
8 the effect of, you know, why don't we pay a
9 couple hundred grand a month if it saves one,
10 two, three, ten lives a year, it's worth it or
11 not worth it? You have never heard any of
12 those discussions within the City of Cleveland
13 or public safety department?

14 A. That is correct.

15 Q. Do you have an opinion about that?

16 MR. NATHANSON: Objection.

17 I feel like that's beyond the scope
18 of his 30(b)(6) capacity.

19 Q. It's a fair objection, but if you
20 can give your response?

21 A. Again, I oversee our video
22 surveillance program, and when you mentioned
23 the hundreds of thousand of dollars a month,
24 that's a one-time cost for us to put up video
25 surveillance cameras versus a recurring fee.

1 So from that perspective, that would be my
2 personal opinion, that our video surveillance
3 program achieves the same goal with fewer
4 costs.

5 Q. Does the video surveillance program
6 reduce incidents of red light violations?

7 A. It's video surveillance, so it is
8 not a photo enforcement program, it serves a
9 different capacity.

10 Q. It is not designed to stop people
11 from speeding or running red lights?

12 A. And --

13 Q. That's true?

14 A. That's true.

15 Q. Okay. And stopping folks from
16 speeding and running red lights is a worthwhile
17 endeavor to promote safety; correct?

18 A. That's correct.

19 Q. Okay. And the City doesn't have
20 any program in place that currently does that;
21 correct?

22 A. The traffic unit does manual
23 enforcement now.

24 Q. Of red lights and traffic cameras?

25 A. No. They do manual enforcement of

1 speeding and other hot spot areas now.

2 Q. Okay.

3 A. So the photo enforcement technology
4 isn't available to do it.

5 Q. And they did that before, during
6 and after the contract; right?

7 A. Correct.

8 Q. That hasn't changed regardless of
9 the fact that the City of Cleveland isn't
10 paying Xerox under the contract; correct?

11 A. Correct.

12 Q. At the time the City of Cleveland
13 entered into the contract, was there anything
14 the City of Cleveland was thinking about that
15 might cause it to terminate the contract?

16 A. No.

17 Q. In other words, if the City of
18 Cleveland during the life of the contract felt
19 that Xerox wasn't performing it could tell
20 Xerox, you are in default; correct?

21 A. If the City felt Xerox wasn't
22 performing we would have those conversations
23 with Xerox about the performance.

24 Q. Okay. And you are aware and I'm
25 happy to show it to you, but there is a default

1 provision where the City of Cleveland can
2 notify Xerox it's in default and it's got a
3 period of time to cure its default; correct?

4 A. Correct.

5 Q. So the only reason the City of
6 Cleveland at the time it entered into the
7 contract would be able to terminate the
8 contract would be if there was a change in law;
9 correct?

10 A. Again, the City didn't terminate
11 the contract.

12 Q. I'm not asking whether the City did
13 or didn't, at the time the City of Cleveland
14 entered into the contract, the only thought it
15 might have had, as far as, well, we may want to
16 terminate the contract or may not, would be if
17 there was a change in law; correct?

18 A. And I don't believe the City ever
19 thought about terminating the contact entering
20 into it. I don't believe that was a discussion
21 to say, we need a termination clause.

22 Q. The City of Cleveland didn't want
23 the termination clause in the contact?

24 A. The contact from 2005 had a
25 termination clause, so I believe we used the

1 same template and maybe added a couple things
2 here or there. However, the termination clause
3 was in the contract in 2005 and we started off
4 with that template to build the new contract.

5 Q. Okay. The termination clause was
6 made to benefit both parties. If the City of
7 Cleveland decided they didn't want cameras they
8 could get rid of it. If the City terminated
9 earlier than the contract's expiration, Xerox
10 would get paid; correct?

11 A. That is correct.

12 Q. The City decided where to deploy
13 cameras; correct?

14 A. That is correct.

15 Q. Okay. It would instruct Xerox,
16 place a camera here, remove a camera from
17 there?

18 A. Correct.

19 Q. And Xerox followed those
20 instructions?

21 A. Correct.

22 Q. Are you aware of any time where
23 Xerox didn't follow those instructions, where
24 it didn't do what the City said?

25 A. No.

1 Q. So the ultimate decision making
2 authority about turning cameras on, off, where
3 to place them, that rested solely with the City
4 of Cleveland, not Xerox; correct?

5 A. That is correct.

6 Q. Sir, why is it the City of
7 Cleveland's position that the City hasn't
8 terminated the contact, even though it isn't
9 paying Xerox under the contract?

10 A. Again, as far as payment fees,
11 those were privileged conversations with the
12 law department on what should be paid.

13 Q. Okay. Who made the decision that
14 the contract is not terminated, that rests
15 solely with the law department?

16 A. That rests solely with the law
17 department.

18 Q. It's the City's position -- I think
19 I'm using your phrase from earlier, the
20 contract remains a living, breathing document?

21 A. That is correct.

22 Q. But a living, breathing document
23 that Xerox hasn't been paid under since
24 November of '14; correct?

25 A. That is correct.

1 MR. BRENNAN: Why don't we take
2 five minutes? We may be wrapping up before the
3 personal.

4 (Short recess had.)

5 Q. Sir, is it true and accurate to say
6 that the sole basis for the City's -- sole
7 factual basis for the City's decision to turn
8 off the cameras was the passage of the ballot
9 initiative?

10 A. That is correct.

11 Q. Is it true and accurate to say that
12 the sole basis for the City's decision to cease
13 paying Xerox was the passage of the ballot
14 initiative?

15 A. That is correct.

16 Q. Is it fair to say that the
17 negotiation of the contract and execution of
18 the contract, that was something that was
19 scrutinized both outside the law department and
20 within the law department?

21 A. Correct.

22 Q. Okay. This wasn't something that
23 was done haphazardly, it was the subject of a
24 lot of scrutiny and a lot of evaluating before
25 the City entered into the contract?

1 A. That is correct.

2 Q. Okay. And I want to show you --

3 MR. BRENNAN: What is our next one,
4 5?

5 THE NOTARY: Yes.

6 MR. CAMARDO: 5.

7 - - - - -

8 (Thereupon, Plaintiff's Exhibit 5,
9 E-Mail With Revised Copy of License
10 and Service Agreement, was marked
11 for purposes of identification.)

12 - - - - -

13 Q. Sir, showing you what's been marked
14 for purposes of identification as Exhibit 5.
15 Which at the bottom of the page bears an
16 alphanumeric labeling that ends in 318.

17 Do you have that document in front
18 of you?

19 A. Yes, I do.

20 Q. This is, in fact, an e-mail that
21 you drafted?

22 A. This is correct.

23 Q. Okay. And you forwarded it onto
24 Jim?

25 A. Correct.

1 Q. And in the cover e-mail, you're
2 identifying certain revisions to the attached
3 agreement; correct?

4 A. This is correct.

5 Q. Okay. So not only with the law
6 department looking at the language and the
7 potential contract, but so were you and other
8 folks within the City of Cleveland?

9 A. That is correct.

10 Q. Okay. And if you turn to the page
11 at the bottom that ends in 332. Do you have
12 that in front of you?

13 A. I do.

14 Q. Okay. And do you see section
15 6.1.2, force majeure, do you have that?

16 A. Yes, I do.

17 Q. And you see the provisions of the
18 agreement are underlined; correct?

19 A. Correct.

20 Q. Okay. And to the left-hand side of
21 the page, there is a vertical line that matches
22 up with the underlining; correct?

23 A. Correct.

24 Q. And that indicates that these are
25 revisions being made and what's commonly used

1 as redlined form to the agreement; correct?

2 A. That is correct.

3 Q. Were these changes that you were
4 proposing in the agreement or someone else was
5 proposing in the agreement?

6 A. So these changes would have came
7 from the law department.

8 Q. Okay. So this is a redline that
9 would have been forwarded to both, the law
10 department -- from the law department to you?

11 A. Correct.

12 Q. But not only is the law department
13 reviewing proposed revisions to the agreement,
14 you are and other folks and the City of
15 Cleveland are as well?

16 A. Correct.

17 Q. Okay. Sir, at this point in time
18 we are going to conclude your 30(b)(6) witness.
19 Reserving the right if necessary to resume it.
20 We are now concluding that portion of the
21 deposition and are moving forward only asking
22 you to testify in your personal capacity.
23 Okay?

24 A. Okay.

25 Q. It's come to our understanding that

1 at some point in time you had electronic data
2 that was lost or destroyed on your computer;
3 correct?

4 A. That's correct.

5 Q. Okay. And when did that happen?

6 A. So I lost e-mails from -- I started
7 with the City in July of 2010, so anything from
8 July of 2010 to 2014, probably, of -- I would
9 say early 2014. So probably anything from,
10 maybe, May of 2014. So that time period from
11 July 2010 to about May of 2014, the previous
12 computer I had, essentially, stopped working.

13 Documents were saved to the hard
14 drive. Well, my e-mail archive files, when
15 they set it up, they saved it to the hard
16 drive. So when that hard drive was gone, I
17 lost those -- those files. So my files now
18 start with 2014 on my current computer.

19 Q. Okay. And when in 2014?

20 A. It's probably anything around, I
21 would say, May, May to June of 2014, I have
22 most of my e-mails.

23 Q. I just want to make sure, when did
24 the crash actually occur, so I understand the
25 period of time where data was destroyed, but

1 when did the destruction take place, for lack
2 of a better phrase?

3 A. That, I'm not sure of. I just know
4 the gaps in my e-mails, in the documents. So
5 anything that I didn't have on there,
6 essentially, a shared drive, on a server or USB
7 drive e-mail-wise I don't have.

8 Q. Okay. But you don't know whether
9 that crash, for lack of a better phrase,
10 occurred in '14, '15 or '16?

11 A. Oh, no, the crash would have
12 occurred between '13 and '14.

13 Q. Okay. And as part of responding to
14 this lawsuit, have you sought to gather
15 documents responsive to any requests that Xerox
16 might have made?

17 A. Yes.

18 Q. And what did you do to respond to
19 Xerox's document request?

20 A. There was a request for e-mails, so
21 the e-mails that I had I produced. I believe
22 the IT folks actually went into the computer
23 also trying to see what they could potentially
24 pull from archives, any documents as far as
25 contacts, letters, all that stuff, was turned

1 over, as part of, I believe, discovery.

2 Q. Okay. Did you physically go
3 through the process of trying to pull e-mails
4 from your computer?

5 A. I have done it and also someone
6 from IT actually worked on my computer, also.

7 Q. And how did you go about searching
8 for and gathering documents responsive to
9 Xerox's document request?

10 A. I went through and searched
11 anything with Xerox in the title, anything
12 dealing with Jeff Townsend. I actually had a
13 Xerox folder. So a lot of the e-mails that
14 Jeff and I exchanged or received went through
15 the folder only for Xerox documents.

16 Q. Okay. You did a word search in
17 your e-mail?

18 A. That is correct.

19 Q. And the terms that you plugged in
20 was Xerox as well as Jeff's name?

21 A. Jeff's name and anything dealing
22 with Jim also, Jim Lazarski.

23 Q. Okay. All right.

24 MR. NATHANSON: We've got that
25 name.

1 MR. BRENNAN: We've taken care of
2 it already.

3 Q. Did you do any other search terms?

4 A. No, those would be the search
5 terms.

6 Q. Okay. Did you search both your
7 inbox and your sent items?

8 A. I did.

9 Q. Okay. Do you have a deleted items
10 folder?

11 A. I do.

12 Q. Did you search that folder as well?

13 A. No. Once they are deleted, they
14 are deleted.

15 Q. Okay. There's no temporary housing
16 for those e-mails and communications until they
17 finally and formally go to the trash?

18 A. The stuff that was saved on the
19 hard drive was, essentially, deleted off of
20 there, but the archive stuff.

21 So, essentially, any of my
22 documents that communicate with Xerox went to a
23 special folder. So it's -- and I have a
24 special sent folder. So, essentially, I
25 archived all of my sent e-mails from '14, '15

1 and '16 are all in an archive folder now.

2 Q. Okay. Do documents automatic --
3 e-mails automatically go to an archive?

4 A. No, I physically move them.

5 Q. Okay. And how regularly do you do
6 that?

7 A. Whenever I get the notice that my
8 inbox is running out of space, I will start
9 moving e-mails.

10 Q. And once you identify documents
11 that may be responsive to Xerox document
12 request, how did you collect those documents?
13 In other words, did you burn them on a disk?
14 Did you print them off? What did you do?

15 A. I sent them over in an e-mail to
16 the law department.

17 Q. You indicated you also had -- let
18 me stay within the electronic documents.

19 Did you search any Word documents?

20 A. Yes.

21 Q. And how did you search for Word
22 documents?

23 A. I have a Xerox folder, a photo
24 enforcement folder, where I keep all documents
25 related to either this contract or anything

1 dealing with Xerox.

2 Q. Do you have any subfolders within
3 that folder or just one main folder?

4 A. Yeah, there's subfolders. So
5 there's contract stuff. There's press release
6 stuff for photo enforcement site. So literally
7 anything dealing with Xerox and the photo
8 enforcement program.

9 Q. And you went through all of the
10 Word documents that you had and did you do the
11 same process for those for the law department?

12 A. Correct.

13 Q. You also -- did you search any
14 other types of documents, PDFs, Excel
15 spreadsheets, PowerPoints, anything else?

16 A. No, I did not.

17 Q. Do you believe you have any such
18 documents related to the Xerox contracts and
19 the traffic program?

20 A. No. The only other documents would
21 have been, like, the annual report, which is
22 prepared by Xerox.

23 Q. What is included with the annual
24 report?

25 A. That report was the different

1 cites, the number of citations, the events, how
2 the mobile cameras are doing, and then it
3 includes a tally of the overall program.

4 Q. And the tally, what's included
5 within the tally?

6 A. Red light cameras generated this.
7 Fixed cameras generated that.

8 Q. And this is and that is revenue
9 dollars?

10 A. That is correct.

11 Q. So you would get on an annual basis
12 the amount of revenue was being generated by
13 the cameras?

14 A. Every January.

15 Q. Okay. And did you get any annual
16 or other regular reports that indicated how
17 much the City of Cleveland was paying Xerox?

18 A. No.

19 Q. Okay. Do you know whether or not
20 the City of Cleveland prepared its own reports,
21 indicating how much revenue had been generated?

22 A. From time to time finance would
23 have to put things together for counsel,
24 especially budget hearings. Budget hearings,
25 that would always be a topic that would come

1 up.

2 Q. And who was responsible for doing
3 that within financing?

4 A. It would be part of the Clerk of
5 Courts budget hearing to council, because they
6 would have to report out the photo enforcement
7 program forgiveness, parking forgiveness.

8 Q. Do you know the name of any person
9 or persons who prepared those types of reports
10 for Council?

11 A. Maria Vargas is the administrator
12 over the Parking Violations Bureau. So that
13 would, essentially, be my point of contact for
14 anything financial related to what photo
15 enforcement is doing.

16 Q. And do you know why the City of
17 Cleveland prepared its own reports if Xerox
18 separately created reports showing revenue
19 generated?

20 A. Again, council members want
21 documentation in all types, forms, formats, so
22 it's based off of council requests.

23 Q. Okay.

24 A. We'd format document requests to
25 however they want to see it.

1 Q. Did you ever receive any indication
2 that the information about the revenues
3 collected by the City of Cleveland, you know,
4 was inaccurate or needed to be double-checked
5 or needed re --

6 A. That never came up in our
7 conversations.

8 Q. Okay. So as far as you know, the
9 information that the City of Cleveland received
10 from Xerox about the amount collected you have
11 no reason to challenge whether its accurate or
12 inaccurate; correct?

13 A. From the operations and safety
14 department, no.

15 Q. Okay. Do you know where the folks
16 within the Clerks of Courts who were preparing
17 the reports for City Council gathered the data
18 to show the amounts of monies collected?

19 A. They actually have their own
20 parking enforcement program, which feeds
21 directly into the photo enforcement program.
22 So they have their own system set up on how
23 they do collections and how money comes in.

24 Q. And is there a name for that
25 program that they use, how would you refer

1 to --

2 A. I believe it is called ETIMS, but
3 they could better clarify the exact name of
4 that system.

5 Q. Okay. ETIMS, is that an acronym?
6 How would you spell that just --

7 A. E-T-I-M-S.

8 Q. Okay. Is that an acronym?

9 A. It's an acronym that I don't know
10 what it stands for. This is more of a parking
11 violations bureau support function.

12 Q. And do you know whether that
13 tracks, you know, late fines or late penalties
14 fines, sort of how it categorizes information?

15 A. No.

16 Q. Okay. Would you get those reports
17 from the Clerk of Courts regularly?

18 A. No.

19 Q. And who at City Council that you
20 are aware of wanted to know how much revenue
21 was being generated?

22 A. It could be any council member. So
23 Zack Reed would be a perfect example of wanting
24 to know how much is the City making.

25 So any council member who wanted to

1 make the argument that the program was about
2 revenue, would make those statements and want
3 information.

4 Q. Okay Councilwoman Brady was another
5 one.

6 A. Yeah, Councilwoman Brady. Could be
7 council member TJ Dow.

8 Q. Okay. So did you have
9 conversations with those folks on that subject?
10 In other words, they would want to know how
11 much revenue is being generated because our
12 impression is it's not about safety, it's about
13 revenue?

14 A. Typically, Director McGrath would
15 handle those one-on-one conversations with
16 council members when it got to -- to that level
17 of wanting to know money and dollars and make
18 those arguments.

19 Q. You tried to stay out of the fray?

20 A. Yes.

21 Q. Discretion is the better part of
22 valor, so that's a good move on your part.

23 You are aware, before the contract,
24 that there -- this was kind of a political hot
25 spot, you know, traffic camera, some council

1 people wanted, it some people didn't; correct?

2 A. That's correct.

3 Q. Some members of the voting populus
4 wanted traffic cameras, a lot of folks probably
5 didn't; correct?

6 A. That's correct.

7 Q. When the ballot initiative was
8 proposed, what efforts did you personally make,
9 if any, to try to stop the ballot initiative
10 from passing?

11 A. So as part of my job from time to
12 time I have to actually go out to different
13 council ward club meetings, where they meet
14 with their residents.

15 So at times I've been out speaking
16 about our video surveillance program. And when
17 they have conversations or questions about the
18 traffic camera program, the council members
19 like to put me on the spot and say, well, this
20 is the gentleman who oversees the program.

21 So I gave them details about, you
22 know, this is the numbers, you know, this is
23 what happens for you to actually get a
24 violation. So we encountered -- a lot of folks
25 didn't know that you got to be doing 11 miles

1 over the posted limit to get a violation.

2 And you know, hey, if you stop, and
3 just because you go across the line and you see
4 the camera flash, that doesn't necessarily mean
5 you are getting a ticket. So we did a lot of
6 educational things, letting folks know out in
7 the community about the program.

8 Q. And the purpose of that is
9 two-fold. It's, one, to give truthful, factual
10 information to folks but, two, that truthful,
11 factual information would, hopefully, get
12 people to buy in to going forward with the
13 program and continue to support it; correct?

14 A. That is correct.

15 Q. You explained to folks, hey, we
16 believe there is a real safety benefit to this.
17 We believe the City should do it. It's
18 preventing accidents, saving lives?

19 A. Correct.

20 Q. Do you know how many different
21 wards you spoke with to try to support the
22 traffic camera program?

23 A. My best recollection would probably
24 be over half of the wards in the City I've been
25 to just because that's part of my duties and

1 responsibilities in the position. It might not
2 be necessarily that I went there for traffic
3 cameras, but when the question comes up they
4 love to throw you under the bus to answer it,
5 so.

6 Q. Well, the whole point is to not
7 have people be thrown under the bus here, so.

8 A. Yeah.

9 Q. Did you ever have conversations
10 with the mayor about the traffic camera
11 program?

12 A. No, I did not.

13 Q. And are you aware of any print,
14 television, radio or other media, tools
15 employed by the City of Cleveland to try to
16 prevent the ballot initiative from being
17 passed?

18 A. Yes.

19 Q. And what media are you aware of?

20 A. I know Councilman Johnson, Jeff
21 Johnson, and, also, Councilman Brian Cummins
22 did a couple things on NPR. So I prepared,
23 essentially, talking points documentation for
24 them so they could be prepared to go on NPR in
25 support of the program. I also know the mayor

1 did do a commercial in support of the program.
2 And I believe there was actually a mailing that
3 went out in support of the program also.

4 Q. And were you involved in any
5 television aspect? You talked about the
6 talking points for the radio. Were you
7 involved in drafting anything for television?

8 A. No. I've done media interviews
9 related to the topic, but nothing drafted for
10 television for the mayor or anybody else.

11 Q. Okay. You've personally done
12 interviews related to the traffic camera
13 program?

14 A. Correct.

15 Q. And who with whom have you done
16 interviews?

17 A. I believe the last one was probably
18 with Tom Meyer from Channel 3.

19 Q. Okay. When was that?

20 A. This was probably back in June of
21 2013, somewhere around there I believe that was
22 probably either -- no, I take that back. When
23 we issued out the PCUs, Director Flask and I
24 did an interview with Channel 5 promoting the
25 PCUs, letting people know what they were, the

1 purpose for them.

2 And I am trying to I think, there
3 -- there might have been a couple other ones
4 that -- we get media requests to talk about the
5 program or they have questions about the
6 program.

7 Q. Okay. And you're aware that some
8 folks within City Council wanted the ballot
9 initiative to pass?

10 A. That's something I wasn't aware of.
11 From my perspective, we didn't see anybody from
12 council. If they felt that way, they weren't
13 out there campaigning against the program, I
14 will say, to the best of my knowledge.

15 Q. Okay. But you knew certain council
16 members didn't want it in their ward?

17 A. That is correct.

18 Q. Okay. And some people thought it's
19 not for safety, it's all the money grab, it's
20 all about cash?

21 A. That's correct.

22 Q. Okay. Were you ever asked to sign
23 the ballot initiative?

24 A. Actually, I believe I was asked to
25 sign it at a community meeting I was at.

1 Q. Okay.

2 A. I -- I did not sign the ballot
3 initiative.

4 Q. Do you know folks who, you know,
5 within the City of Cleveland did sign it?

6 A. To the best of my knowledge, no, I
7 don't know any of those folks.

8 Q. Do you know who presented it to you
9 for your signature?

10 A. Some gentleman was there at the
11 meeting trying to collect signatures.

12 Q. Okay. Have you described, in
13 general terms, everything you did to, sort of,
14 hopefully, prevent the ballot initiative from
15 being passed?

16 A. Yes. As an employee of the City,
17 it was told to us very clearly, that as a
18 function of giving people the facts of the
19 programs, we were allowed to do that, but to
20 outright campaign against it as a City
21 employee, there's rules that we are not allowed
22 to do certain things, so we were told to be,
23 essentially, as helpful, as factual as we
24 could, but there is a line we can't cross as a
25 City employee to outright campaign -- campaign

1 for something.

2 Q. Or against something?

3 A. Or against something, correct.

4 Q. And you stayed within those
5 directed boundaries?

6 A. Correct.

7 Q. Fair to say you were disappointed
8 when the ballot initiative passed?

9 A. That is correct.

10 Q. Okay. And Mr. Flask has testified,
11 you know, that that's because if the traffic
12 program has the effect of saving lives and
13 reducing accidents, removing the cameras has
14 the opposite effect? In other words, accidents
15 and fatalities increased; correct?

16 A. Correct.

17 Q. But, again, you in your personal
18 capacity were not involved in any discussions
19 about, we should challenge the ballot
20 initiative, it may violate the contract clause
21 or some other clauses or laws?

22 A. No. No, I wasn't.

23 Q. Okay. Fair to say you wished the
24 traffic camera program were in place today?

25 A. That is correct.

1 Q. Do you know how the revenues from
2 the traffic camera program were used?

3 A. That, I don't know.

4 Q. Okay. Do you know whether they
5 stayed within the budget for public safety?

6 A. That, I don't know.

7 Q. Okay. So -- well, let me ask you
8 this a different way.

9 Once the traffic camera program
10 ended, City stopped receiving millions of
11 dollars a year from traffic cameras, well, at
12 least for new citations issued, we can agree on
13 that; correct?

14 A. Correct.

15 Q. All right. As a result of that,
16 did the City have to reduce its force or take
17 any other measures to cut back on its public
18 safety budget?

19 A. That is something that's out of my
20 kind of bailiwick of what I do. Budget-wise
21 I'm not familiar with how the public safety
22 budget is put together, what's added in, what's
23 taken out.

24 Q. Okay. You don't have any
25 involvement in that, whether it's making

1 recommendations or looking at how we allocate
2 costs within public safety?

3 A. No.

4 Q. We have a double negative in there.
5 My statement is correct?

6 A. No, I'm not in the position to look
7 at the budget, allocate or make anything --
8 make any recommendations on what's being
9 funded, what's not being funded.

10 Q. One option the City of Cleveland
11 could have explored after the passage of the
12 ballot initiative was to have a police officer
13 onsite where the traffic cameras were; correct?

14 A. That is correct.

15 Q. And one of the options the City of
16 Cleveland had was to have officers onsite only
17 during a limited period of time? For example,
18 morning rush hour or afternoon rush hour;
19 correct?

20 A. Correct.

21 Q. In other words, it wouldn't be the
22 requirement by the City of Cleveland that you
23 would need to have three officers there a total
24 of 24 hours a day; correct?

25 A. Correct.

1 Q. The City could have deployed one an
2 hour here, two hours there to further prevent
3 violations of speed and red light laws;
4 correct?

5 A. Correct.

6 Q. And, in fact, you have empirical
7 data that shows there are certain points of
8 time that are greater -- that, you know, result
9 in greater violations than other points in
10 time; correct?

11 A. Correct.

12 Q. 3 a.m. doesn't get as many tickets
13 as 8 in the morning, when someone is rushing to
14 work; correct?

15 A. That's correct.

16 Q. But, again, were you involved in
17 any discussions about whether the City should
18 do that? Should we go ahead and have an
19 officer at these high risk areas at X or Y time
20 of the day?

21 A. During those discussions, the main
22 focal point was, we don't have enough officers
23 to employ at, say, ten locations. And the
24 whole point of the fixed camera location is,
25 you didn't need an officer there. And that's

1 why we changed from the mobile speed vehicles
2 to the portable camera units because all of the
3 sudden we could drop a trailer in a location
4 and didn't have to manually have an officer in
5 a police car so you are not there for three
6 hours. All of the sudden we could reallocate
7 that resource.

8 Q. The City of Cleveland has done that
9 before? In other words, used an officer in
10 connection with a camera?

11 A. We have six mobile vehicles where
12 we had to place an officer in that vehicle.

13 Q. And those mobile units were
14 effective in levying from speed and red light
15 violations?

16 A. In the beginning, yes. In the end
17 of the program and why we switched, they became
18 less and less effective due to mandates from
19 City Council.

20 Q. Which happens with all traffic
21 cameras if they are successful; right? A
22 successful program means over time you are
23 going have fewer violations; right?

24 A. I would differ from that reasoning.

25 Q. I'm happy to show you e-mails, but

1 you know, you have e-mail communications where
2 you are hoping numbers are being reduced and
3 the incidents of violations are going down;
4 correct?

5 A. That's a correct statement.

6 Q. That's a goal of the traffic camera
7 program; right?

8 A. Correct.

9 Q. And, in fact, that is what happens.
10 Over the life of Xerox's cameras, number of
11 violations go down, with you, wearing your
12 public safety hat, say, that's a good thing;
13 right?

14 A. Right. And I was speaking of the
15 mobile cameras. Council made demands that all
16 the mobile cameras spend a certain amount of
17 time in each council ward. Which took the
18 resources away from hitting some of those areas
19 that were notorious for speeding.

20 So the PCUs allowed us to be in a
21 council ward, but also focus on those notorious
22 areas.

23 Q. And didn't the City in fact, sort
24 of, rank this is the worst intersection, this
25 has the highest rates of accidents and

1 fatalities, did you keep that sort of empirical
2 data?

3 A. The agency is NOWAKA, which is
4 probably like the Northeast Ohio -- any
5 something, they essentially study accident data
6 across the five county region and rank the
7 intersections that have the most crashes. So,
8 yes, we would look at that data, compare it to
9 the cites we currently have up operational and
10 should we expand.

11 Q. And after the passage of the ballot
12 initiative, did the City of Cleveland give
13 consideration to leaving traffic cameras in the
14 top five or ten intersections along with an
15 officer there?

16 A. To the best of my knowledge, no.

17 Q. You weren't a party to any
18 discussions about any topics like that, let's
19 keep the cameras as sort of belt and
20 suspenders, we will use an officer at these
21 half dozen high risk locations?

22 A. No, at that time, that would have
23 been chief of police, traffic unit conversation
24 of how they plan to deploy their resources,
25 their officers.

1 Q. Do you know, were any officers
2 terminated following -- as a direct result of
3 the passage of the ballot initiative?

4 A. I do not believe they were.

5 Q. Okay. Are you aware of any safety
6 measure the City had to get rid of as a result
7 of the passage of the ballot initiative?

8 A. That, I'm unaware of.

9 Q. I think I asked you this in your
10 30(b)(6) capacity, but I just want to, you
11 know, ask you in your personal capacity.

12 You weren't involved in any
13 discussions about -- setting aside the law
14 department, about we should or should not pay
15 Xerox; correct?

16 A. Correct.

17 Q. The letters that you -- you did
18 author some letters to Xerox following the
19 passage of the ballot initiative; correct?

20 A. That is correct.

21 Q. Did you draft those on your own or
22 were those drafted by the law department for
23 your signature?

24 A. Drafted with assistance from the
25 law department.

1 Q. Okay. Who carried the labor on
2 that, who was the first drafter of those
3 communications?

4 A. It most likely was a collaborative
5 process between Jeff Marks, Ronda Curtis and,
6 probably, Rick Horvath.

7 Q. Okay. Is it fair to say that the
8 statement in those communications that postdate
9 the ballot initiative that you sent to Xerox,
10 that those were primarily authored by folks
11 other than yourself?

12 A. That is correct.

13 Q. Okay. And so if there are factual
14 positions or legal arguments made in those
15 documents, while they bear your signature,
16 those aren't -- weren't made by you in your
17 personal capacity?

18 A. Right. I'm the program
19 administrator, so the letter should come from
20 me or next up would be Director McGrath, but
21 correct.

22 Q. So if you authored a letter saying,
23 you know, we haven't terminated, that's someone
24 else, law department or otherwise,
25 communicating to you that the City of Cleveland

1 took the position it wasn't terminated; right?

2 A. That is correct.

3 Q. It wasn't your own determination,
4 after reviewing the contract and otherwise
5 making the decision; right?

6 A. That is correct.

7 Q. In fact, after the ballot
8 initiative was passed, you didn't go back and
9 review the contract and the amendment; did you?

10 A. No.

11 Q. You weren't there -- you were
12 intimately involved in, sort of, the passage of
13 the contract, getting it drafted, getting it to
14 its final form; is that fair to say?

15 A. Yes.

16 Q. But you didn't pick up the contract
17 after the ballot initiative or on the day of
18 ballot initiative and say what does this mean
19 legally or otherwise?

20 A. Correct, I did not.

21 Q. And have you looked at the contract
22 since the date of the ballot initiative to
23 today?

24 A. Yes. I have looked at the
25 contract.

1 Q. Okay. As part of your deposition
2 preparation?

3 A. Yes.

4 Q. And what did you do to prepare for
5 your deposition?

6 A. Reviewed the contract and all the
7 documents, essentially, I sent over to the law
8 department.

9 Q. And did you do that with your
10 counsel?

11 A. On my own and with counsel.

12 Q. Okay. And did you meet with
13 counsel, I don't want to know the substance,
14 did you meet with counsel to prepare for your
15 deposition?

16 A. Correct.

17 Q. On how many occasions?

18 A. I believe I met with them twice.

19 Q. When were those meetings?

20 A. I think the initial drafting of
21 interrogatories and then a day before coming to
22 the deposition.

23 Q. Okay. So --

24 A. Just a review.

25 Q. Yesterday? Weren't you being

1 deposed yesterday?

2 A. Yes, I was.

3 Q. So you were being deposed and you
4 were being prepped? It's a full day.

5 A. Yes.

6 Q. Fair enough.

7 Did you do anything else to prepare
8 for your testimony today?

9 A. No.

10 Q. Did you talk to anyone about your
11 testimony?

12 A. No.

13 Q. But I take it you advised one of
14 your two bosses that, hey, I'm not going to be
15 in today, I'm stuck with the lawyers again?

16 A. Yeah. I share my calendar. So
17 they can look on my calendar.

18 Q. Okay.

19 A. If they want to know where I'm at
20 they have that ability to see where I am at so,
21 yes, they are aware of it.

22 Q. Have you talked with Mr. Flask
23 since he testified?

24 A. No, I have not.

25 Q. Okay. Have you talked with anyone

1 else, other than your counsel, about the
2 substance of your testimony? What you are
3 planning to talk about? What you are planning
4 to say?

5 A. Yes.

6 Q. Okay. Who -- who else have you
7 discussed it with?

8 A. Oh, my girlfriend.

9 Q. Okay. What did you say to her?

10 A. Oh, just that I have a deposition
11 here and it is about the photo enforcement
12 program and Xerox.

13 Q. Okay. Again, I asked you this as
14 City representative, but in your personal
15 capacity, if I represent to you that the City
16 made over 10 million dollars and Xerox lost
17 millions of dollars, how does that strike you?

18 A. Personally it's -- to me it's part
19 of -- there was a risk associated with this
20 contract, this program, and nationwide we've
21 seen this happen in other cities. And I know
22 Ashtabula County was one where the voters voted
23 it out and Xerox had that contract at that
24 time.

25 Q. And do you know if Xerox was paid a

1 termination fee in that situation?

2 A. I didn't know the legal standing of
3 that. I just know they were in Ashtabula and
4 the voters voted it out.

5 Q. And you knew that the City of
6 Cleveland and other local municipalities had
7 addressed traffic camera programs?

8 A. Correct.

9 Q. And you knew that before the City
10 entered into the contract?

11 A. Correct.

12 Q. Okay. But it's your testimony
13 you're comfortable today if under the contract
14 the City made over 10 million dollars a year
15 and Xerox lost millions of dollars, that's fine
16 with you?

17 A. That's the risk associated with
18 this program and the contract.

19 Q. The risk all falls on Xerox, not
20 the City of Cleveland?

21 A. I think that's an opinion.

22 Q. Is that your opinion?

23 A. I think both sides had risks.

24 Q. Okay. But at the end of the day
25 one's got a big pile of money, the other is in

1 the red?

2 A. Again, I think both sides had
3 risks.

4 Q. Who got the reward here?

5 A. At the end of the day, I don't
6 think anybody got the reward. I think we are
7 both dissatisfied that it can't continue.

8 Q. But while it was in place, the City
9 of Cleveland saved lives, reduced accidents,
10 reduced violations and made over 10 million
11 dollars. Pretty good result for the City of
12 Cleveland; right?

13 A. And our program was on Xerox's
14 website as the banner program. And we were
15 customer references for other RFP projects, so
16 I think they reaped from -- the success of our
17 program allowed them to get other contracts
18 also.

19 Q. Okay. And what's your basis for
20 saying that?

21 A. I know Jim has reached out to me to
22 say, hey, we have put you down as a reference
23 for this RFP, a customer might call you.

24 Q. Did any customers ever call you?

25 A. I don't recall that.

1 Q. Okay. You don't have any memory
2 sitting here today of any representative from
3 any other state or local municipality
4 contacting you saying should we go with Xerox
5 or not?

6 A. Honestly, I deal with Xerox,
7 Motorola, several other big companies and
8 people always call, how is this technology?
9 How were you treated?

10 Q. No. But I'm asking specific, do
11 you have any recollection of anyone from any
12 other state or municipality calling you about
13 the Xerox traffic camera program?

14 A. Honestly, that I don't recall.

15 Q. Okay. You never gave, to the best
16 of your recollection, a letter of
17 recommendation, an oral recommendation of Xerox
18 to another municipality; correct?

19 A. To the best of my recollection, I
20 believe I did.

21 Q. You believe you did?

22 A. I believe I did.

23 Q. To whom?

24 A. Again, I don't recall the exact
25 City, municipality, but I remember being

1 contacted by Jim to say, hey, we put you down
2 for a reference as part of --

3 Q. But did you actually get contacted,
4 that was my question, not were you put down as
5 a reference. Did you actually get contacted
6 orally or in writing by any municipality about
7 the Xerox Traffic Camera Program?

8 A. That, I can't give you an answer
9 on.

10 Q. Meaning, your answer is, not that I
11 recall?

12 A. Not that I recall.

13 Q. So sitting here today, you can't
14 identify a specific contract that Xerox got
15 because of the City of Cleveland contract;
16 correct?

17 A. That is correct.

18 Q. And there's no provision in the
19 party's agreement for a referral fee or
20 financial benefit that Xerox would get from
21 doing business with the City of Cleveland,
22 other than getting paid under the contract;
23 correct?

24 A. That is correct.

25 MR. BRENNAN: Why don't we take

1 five minutes. We will probably be wrapping up
2 soon.

3 (Short recess had.)

4 Q. Mr. Jones, we were talking a little
5 bit about document collection. You also had
6 paper files related to the Xerox traffic camera
7 program?

8 A. Pretty much everything was
9 electronic, I tried to. Pretty much anything
10 would have been a Word document, PDF, would
11 have scanned it into, made it electronic. I
12 don't believe I had a paper-paper folder.

13 Q. Did you look to see if you had a
14 paper folder?

15 A. No.

16 Q. Okay. I'm going to ask that you do
17 that just to confirm that you don't have
18 anything that hasn't been produced?

19 A. Okay.

20 - - - - -

21 (Thereupon, Plaintiff's Exhibit 6,
22 March 25, 2015 Correspondence, was
23 marked for purposes of
24 identification.)

25 - - - - -

1 Q. We talked a little bit about your
2 correspondence with Xerox. And I'm going to
3 show you what's been marked for purposes of
4 identification as Exhibit 6, which is a March
5 25, 2015 correspondence with Xerox?

6 A. Yes.

7 Q. Okay. And, again, this is
8 something that, while it went out under your
9 signature to Xerox, it is drafted by others?

10 A. That is correct.

11 - - - - -

12 (Thereupon, Plaintiff's Exhibit 7,
13 January 12, 2015 Correspondence, was
14 marked for purposes of
15 identification.)

16 - - - - -

17 Q. Showing you what's been marked for
18 purposes of identification as Exhibit 7. This
19 is a January 12, 2015 correspondence going back
20 over here from you to Xerox?

21 A. Correct.

22 Q. And, again, this is something that
23 was drafted by others rather than you?

24 A. Correct.

25 Q. Okay. Did you have any other

1 written communication with Xerox following the
2 ballot initiative?

3 A. Written, no. This would have been
4 the official communication from the City to
5 Xerox.

6 Q. Okay. I take it by the pause in
7 your answer you had oral communications with
8 representatives from Xerox following the
9 passage of the ballot initiative?

10 A. Yes. I know I had conversations
11 with Jeff Townsend, meeting right after, about
12 turning the cameras off. And then it was,
13 okay, we've got to figure out what we are going
14 to do next and having those verbal
15 conversations. There might have been a couple
16 e-mails back and forth between Jeff and I about
17 that.

18 Q. Okay. And setting aside the
19 e-mails, what do you recall being said by you
20 and him in those oral communications?

21 A. At the time it was just that, I've
22 been instructed by the director of the law
23 department to turn the cameras off and what
24 this means for the rest of the program when I
25 get back in town, I'm going have those

1 discussions and will get back to you.

2 Q. Okay. Do you recall during any of
3 those discussions you telling him this was a
4 force majeure event?

5 A. No.

6 Q. Do you recall during any of those
7 discussions telling him, we're not going to pay
8 the termination for convenience fee?

9 A. No.

10 Q. During any of those conversations
11 did you say, we are not going to pay the
12 monthly fee?

13 A. No.

14 Q. During any of those conversations
15 did any representative from Xerox say, it's our
16 fault, don't worry, don't pay us?

17 A. No.

18 Q. Anything like that?

19 A. No.

20 Q. Did you attend any meetings with
21 representatives from Xerox following the
22 passage of the ballot initiative?

23 A. Jeff might have come in town one
24 last time as his responsibilities for being
25 Xerox's project manager, but I believe at some

1 point there was a meeting that was called
2 between Xerox, Xerox attorneys and the City,
3 City Law Department and safety director.

4 Q. Okay. Were you present for that
5 meeting?

6 A. Yes.

7 Q. And what do you recall occurring in
8 that meeting?

9 A. I think the goal of the meeting
10 was, let's figure out a way to work this out
11 between the two parties and there, essentially,
12 walked away where I believe Xerox was going to
13 take a first draft at proposing something and
14 then the City would review it and respond.

15 Q. Okay. Do you recall Xerox
16 proposing a settlement or a resolution to the
17 contract following the passing of the ballot
18 initiative?

19 A. Yes, that is correct.

20 Q. And they proposed that millions of
21 dollars be paid to Xerox; correct?

22 A. That is correct.

23 Q. Okay. Were you responsible for
24 evaluating that proposal and recommending a
25 response or a counterproposal?

1 A. Those would have been privileged
2 conversation with the law department that
3 myself, Director McGrath, members from finance
4 would have been involved, and the Clerk of
5 Courts --

6 Q. Okay.

7 A. -- would have all been involved
8 with those conversations.

9 Q. Did you have any communications,
10 other than with counsel, about how, if at all,
11 to respond to Xerox's proposal to settle this
12 matter?

13 A. No, I was told that at this point
14 everything needed to go through the law
15 department with our recommendations, proposals,
16 responses.

17 Q. Okay. So everything following the
18 passage of the ballot initiative that you would
19 have had communications about after November
20 4th was all done in a privileged setting?

21 A. That is correct.

22 Q. You didn't meet separately with Mr.
23 McGrath or Mr. Flask and say, Xerox wants 5
24 million, we should pay them a million or
25 anything like that?

1 A. That is correct.

2 Q. Is there anything, as it relates to
3 non-payment of Xerox and turning off the
4 cameras, that we haven't yet discussed today?

5 A. I don't believe so.

6 Q. Okay. There is nothing that you
7 can recall sitting here right now?

8 A. Correct.

9 Q. I have no further questions at this
10 time. Thank you.

11 A. Okay.

12 MR. BRENNAN: Thank you.

13 MR. NATHANSON: When they order the
14 transcript you have the right to read it if you
15 want. The court reporter will get in touch
16 with us to have you review it if you want to
17 verify its accuracy or if you trust in her
18 accuracy you can say, we are going to waive
19 signature, on the record, then you don't have
20 to go down to her office to review it to read.
21 It's up to you.

22 We usually recommend waiving.

23 THE WITNESS: All right.

24 MR. NATHANSON: We have used this
25 court reporter in the past and she has done a

1 very good job.

2 THE WITNESS: Okay.

3 I recommend waiving.

4 (Deposition concluded at 12:26 p.m.)
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1 Whereupon, counsel was requested to give
2 instruction regarding the witness's review of
3 the transcript pursuant to the Civil Rules.
4

5 SIGNATURE:

6 It was agreed by and between counsel and the
7 parties that the reading and signing of the
8 transcript of said deposition, be and the same
9 is hereby waived.
10

11 TRANSCRIPT DELIVERY:

12 Counsel was requested to give instruction
13 regarding delivery date of transcript.

14 Terry M. Brennan, Esq.-Original

15 Connor Nathanson, Esq.-Copy
16
17
18
19
20
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REPORTER'S CERTIFICATE

The State of Ohio,)

SS:

County of Cuyahoga.)

I, Christine M. Emery, a Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within named witness, LARRY JONES, II, was by me first duly sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony then given by the above-referenced witness was by me reduced to stenotypy in the presence of said witness; afterwards transcribed, and that the foregoing is a true and correct transcription of the testimony so given by the above-referenced witness.

I do further certify that this deposition was taken at the time and place in the foregoing caption specified and was completed without adjournment.

1 I do further certify that I am not
2 a relative, counsel or attorney for either
3 party, or otherwise interested in the event of
4 this action.

5 IN WITNESS WHEREOF, I have hereunto
6 set my hand and affixed my seal of office at
7 Cleveland, Ohio, on this 28th day of
8 April, 2016.

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13

14 Christine M. Emery, Notary Public
15 within and for the State of Ohio
16

17 My commission expires January 19, 2019.
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[& - allowed]

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

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Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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